

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Signed

76-4134

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Appellee

v.

COMMISSIONER OF INTERNAL REVENUE,

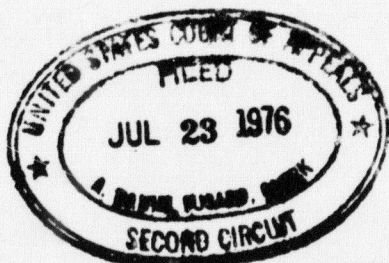
Appellant

ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT

APPENDIX

SCOTT P. CRAMPTON,
Assistant Attorney General,

GILBERT E. ANDREWS,
JONATHAN S. COHEN,
JOHN A. DUDECK, JR.,
Attorneys,
Tax Division,
Department of Justice,
Washington, D. C. 20530.



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TABLE OF CONTENTS

	Page
Docket Entries-----	1
Petition-----	4
Exhibit A, Notice of Deficiency-----	9
Answer-----	14
Consent to Petitioner's Filing of Amendment to Petition-----	16
Amendment to Petition-----	17
Answer to Amendment to Petition-----	19
Stipulation of Facts-----	20
Joint Exhibit 1-A, Estate Tax Return-----	27
Joint Exhibit 2-B, Last Will and Testament of Joseph Vatter-----	62
Supplemental Stipulation of Facts-----	66
Opinion-----	67
Decision-----	81
Notice of Appeal-----	83

UNITED STATES TAX COURT GENERAL DOCKET

DOCKET NO. 7228-72

<u>ESTATE OF JOSEPH VATTER, DECEASED, ANNA VATTER</u> <u>EXECUTRIX</u> <u>79 Gorsline St.</u> <u>Rochester, N. Y. 14613</u> PETITIONER. VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.		APPEARANCES FOR PETITIONER: Sydney R. Rubin (RUBIN, LEVEY AND BATTAGLIA) NAME <u>950 Crossroads Building* Rochester, N. Y. 1461</u> * 2 Main Street East ADDRESS _____ _____ _____
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Date Month Day Year	Filings and Proceedings	Action	Served
Sept. 13, 1972	PETITION FILED: FEE PAID Sept. 13, 1972		Sept. 20, 1972
Sept. 13, 1972	REQUEST by Petrs. for trial at Buffalo, N. Y.	GRANTED Sept. 20, 1972	Sept. 20, 1972
Oct. 31, 1972	ANSWER filed by Resp		Nov 3, 1972
June 8, 1973	NOTICE OF TRIAL on Sept. 17, 1973 at Buffalo, NY.		June 8, 1973
Sept. 10, 1973	NOTICE OF CHANGE OF TRIAL DATE to Sept. 18, 1973 .		Sept. 10, 1973
Sep. 18, 1973	HEARING at Buffalo, N.Y. before Judge Fay		
	Petr motion for continuance-granted. CONTINUED GENERALLY		
Sept. 25, 1973	TRANSCRIPT of Sept. 18, 1973 rec'd.		
Feb. 1, 1974	NOTICE OF TRIAL on May 6, 1974 at Buffalo, N.Y.		Feb. 1, 1974
Mar. 1, 1974	MOTION by Petr. for continuance from May 6, 1974		
	Buffalo, N.Y. trial session & continue generally. (No Obj. Resp.) (Affidavit Attached)	GRANTED Mar. 4, 1974	MAR 6 1974
July 22, 1974	NOTICE OF TRIAL on Oct. 21, 1974 at Buffalo, N. Y.		July 22, 1974
Oct. 21, 1974	TRIAL at Buffalo, N.Y. before Judge Forrester.		
	Petr.'s oral motion to file amendment to petition - GRANTED - (see order)		
	Consent to petr.'s filing of amendment to petition by Resp. filed.		NOV 13 1974
	Amendment to petition filed.		NOV 13 1974
	Answer to amendment to petition filed.		NOV 13 1974

(continued to page 2)

DOCKET NO. 7228-72

(Continuation)

ESTATE OF JOSEPH VATTER, DECEASED, ETC.			PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served	
Month Day Year				
(Min. cont.)	Stipulation of facts with exhibits attached filed.			
	ORIGINAL BRIEFS DUE: January 20, 1975			
	REPLY BRIEFS DUE: February 19, 1975			
	SUBMITTED TO JUDGE FORRESTER			
Oct. 21, 1974	ORDERED, that petr.'s oral motion to file an amendment to petition is granted and the amendment to petition is filed; and further			NOV 13 1974
	ORDERED, that resp.'s oral motion to answer to amendment to petition is granted and the answer to amendment to petition is filed.			
Oct. 30, 1974	TRANSCRIPT of Oct. 21, 1974 rec'd.			
Jan. 9, 1975	JOINT MOTION to extend time for filing briefs until a date 60 days after the opinion of Court of Appeals in "Estate of David Smith"			
		GRANTED Jan. 13, 1975		JAN 13 1975
Mar. 20, 1975	BRIEF for Resp., filed. (Time Extended to March 20, 1975)			MAR 24 1975
Mar. 21, 1975	BRIEF for Petr., filed. (P.M. Timely)			MAR 24 1975
April 18, 1975	REPLY BRIEF for Petr. filed.			APR 22 1975
April 21, 1975	REPLY BRIEF for Resp. filed.			APR 22 1975
May 22, 1975	JOINT MOTION to Reopen Record. (Supplemental Stipulation of Facts Lodged)	GRANTED May 23, 1975		MAY 27 1975
May 23, 1975	Supplemental Stipulation of Facts filed.			
Dec. 31, 1975	FINDINGS OF FACT AND OPINION Filed. Judge Forrester. Decision will be entered under Rule 155.			DEC 31 1975
Feb. 5, 1976	AGREED COMPUTATION filed.			
Feb. 17, 1976	DECISION ENTERED, Judge Forrester.			Feb. 17, 1976
	(Continued to page 3)			

UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 7228-72

(Continuation)

[illegible]

☒ Regular:
☐ Registered:
☐ Certified:

POSTMARK DATE

9-11-72

FILED

1972 SEP 13 PM 2 43

UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX

Petitioner,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

UNITED STATES
TAX COURT

DOCKET NO.

7228-72

P E T I T I O N

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (AP:BUF:RFH:SJP) dated June 16, 1972, and as a basis for this proceeding alleges as follows:

1. Joseph Vatter died testate on May 5, 1968, a resident of the City of Rochester, County of Monroe, State of New York. Anna Vatter, his surviving spouse, was duly appointed and qualified as executrix of his estate, and is still acting in that capacity. The petitioner filed the federal estate tax return with the District Director of Internal Revenue, Buffalo, New York.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner under date

of June 16, 1972.

3. The deficiency as determined by the Commissioner is in estate taxes in the amount of \$517.40, all of which is in dispute. In addition, petitioner claims an overpayment of estate taxes by reason of the Commissioner's failure to allow a deduction for additional attorneys' fees incurred and to be incurred in connection with this matter.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that selling expenses and closing costs pertaining to the sale of realty at 367 Pullman Avenue and 783-85 Arnett Boulevard, both in Rochester, New York, do not constitute allowable expenses of administration under Sec. 2053(a) of the Internal Revenue Code, and in disallowing the deduction thereof for federal estate tax purposes.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) By his Last Will and Testament executed on May 29, 1961, Joseph Vatter (the decedent) left the residue of his estate to Genesee Valley Union Trust Company as trustee upon trusts therein set forth. Said Pullman Avenue and Arnett Boulevard properties constituted part of said residue.

(b) In paragraph EIGHTH of said Will, the decedent, in addition to other powers, granted to his executor and trustee

the power to sell, at public or private sale, any property at any time held by them.

(c) Pursuant to said power, Anna Vatter, as executrix, took possession and control of said real property and sold the same, thereby incurring the selling expenses and closing costs here in controversy.

(d) The sale of said properties by Anna Vatter as executrix of the estate of Joseph Vatter, was necessary in order to pay the decedent's debts, expenses of administration, and taxes.

(e) The sale of said properties by Anna Vatter as executrix of the estate of Joseph Vatter, was necessary to preserve the estate and to effect orderly distribution thereof.

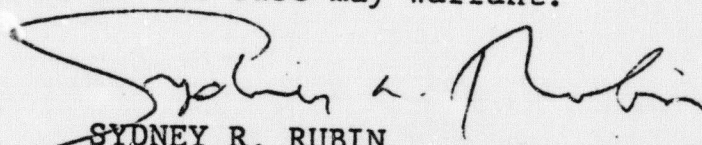
(f) Anna Vatter, as executrix, took possession of and sold said real properties because said properties were not desirable or appropriate assets to be held in trust or to be divided among several distributees upon termination of the trust.

(g) Said selling expenses and closing costs are proper expenses of administration, allowable as such under the laws of the State of New York applicable to the administration

of decedents' estates.

(h) By reason of the Commissioner's failure to allow the deduction of additional attorneys' fees incurred and to be incurred in this matter, which are properly deductible as expenses of administration, petitioner has overpaid its federal estate taxes.

WHEREFORE, the petitioner prays that this Court may hear this proceeding and determine that there is no deficiency due from the petitioner as claimed in the notice of deficiency, and that there is an overpayment of estate taxes; and that the Court determine the amount of said overpayment, and grant such other and further relief as the nature of the case may warrant.




SYDNEY R. RUBIN
RUBIN, LEVEY AND BATTAGLIA
Attorneys for Petitioner
950 Crossroads Building
Rochester, New York 14614

Dated: September 5, 1972

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

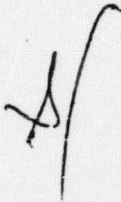
Anna Vatter, being duly sworn, says that she is the Executrix of the estate of Joseph Vatter, the petitioner herein, and that she is duly authorized to verify the above petition on behalf of said petitioner; that she has read the foregoing petition

and is familiar with the statements contained therein, and that the statements therein contained are true, except those stated to be on information and belief, and that those she believes to be true.



Anna Vatter

Subscribed and sworn to before me
this 6 day of September, 1972



300 U.S. Court House, Buffalo, N.Y. 14202

Department of the Treasury

Regional Commissioner
Internal Revenue Service
North-Atlantic Region

Date:

JUN 16 1972

In reply refer to:

201507-11P



Estate of Joseph Victor
Ira, Anna Victor, Executrix
77 Caroline Street
Rochester, New York 14613

Dear Mrs. Victor:

Re: Estate of Joseph Victor
Date of Death: Deficiency:
May 5, 1968 \$517.40

This letter is notifying you as required by law that we have determined the estate tax deficiency shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiency was computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Sincerely yours,

Commissioner

By

(Signed) Robert F. Hoffer

Robert F. Hoffer
Appellate Conference

Enclosures:
Waiver
Statement
Envelope

EXHIBIT "A"

BEST COPY AVAILABLE

FORM 4089
(JANUARY 1966)

TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

STATUTORY NOTICE STATEMENT

SYMBOLS

AP:3UF:RFH:SJP

Estate of Joseph Vatter
Anna Vatter, Executrix
79 Gorsline Street
Rochester, New York 14613

KIND OF TAX

Estate

DATE OF DEATH

XXXXXX YEAR ENDED

DEFICIENCY

May 5, 1968

\$517.40

☒ Copy to Authorized Representative:

Rubin, Levey and Battaglia
950 Crossroads Building
Rochester, New York 14614

FORM 3614 (REV. APR. 1963)		ESTATE TAX		STATEMENT SCHEDULE 1	
ESTATE OF Joseph Vatter				DATE OF DEATH May 5, 1968	
TAXABLE ESTATE AS SHOWN IN:					
<input checked="" type="checkbox"/> RETURN AS FILED <input type="checkbox"/> PRELIMINARY LETTER DATED <input type="checkbox"/> STATUTORY NOTICE DATED				\$48,521.11	
INCREASES (DECREASES) TO TAXABLE ESTATE (SEE ATTACHED EXPLANATION OF ITEMS)					
(a) Funeral and Administration Expenses				\$ 4,642.68	
(b) Marital Deduction				(2,321.34)	
TAXABLE ESTATE AS REVISED				50,842.45	
TAX COMPUTATION	GROSS ESTATE TAX			7,210.61	
	CREDIT FOR STATE DEATH TAXES SUBSTANTIATED			86.74	
	GROSS ESTATE TAX LESS CREDIT FOR STATE DEATH TAXES			7,123.87	
	OTHER CREDITS				
	ESTATE TAX LIABILITY			7,123.87	
	ESTATE TAX ASSESSED				
				6,606.47	
	DEFICIENCY (OVERASSESSMENT)			517.40	
	LESS: ADDITIONAL CREDIT FOR STATE DEATH TAXES ALLOWABLE, IF SUBSTANTIATED				
	DEFICIENCY (OVERASSESSMENT) AFTER STATE DEATH TAXES ALLOWABLE			517.40	

FORM 838-A FEBRUARY 1963	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT 2
NAME OF TAXPAYER Estate of Joseph Vatter		YEAR/PERIOD ENDED IN May 5, 1963

(a) It is determined that the selling expenses pertaining to the sale of realty at 357 Pullman Avenue, Rochester, New York, and at 703-35 Arnett Boulevard, Rochester, New York, do not constitute an allowable administrative expense under section 2053(a) of the Code.

(b) Deductions	Returned	Corrected
Bequests, etc. to Surviving Spouse		
(Marital Deduction)	\$108,521.12	\$110,242.46

Pursuant to the provisions of Article Third of his Last Will and Testament, decedent provided for one-half of his adjusted gross estate for the benefit of his widow recomputed as follows:

Property interests passing to Surviving Spouses:

1) Mortgages, Notes and Cash	\$ 10,906.56
2) Insurance	33,245.20
3) Joint Property	54,142.58
4) Other Property	5,456.35
Total Value	\$103,351.19

FORM 836-A SNAPOUT FEBRUARY 1969	EXPLANATION OF ITEMS - 13 -	SCHEDULE NO. OR EXHIBIT 3
NAME OF TAXPAYER Estate of Joseph Vatter		YEAR/PERIOD ENDED DATE OF DEATH May 5, 1968

Gross Estate	\$231,028.41
Less: Debts and Charges	7,403.50
Adjusted Gross Estate	\$221,624.91
One-half of Adjusted Gross Estate	110,812.46

Maximum marital deduction pursuant to the provisions of section 20.2056-(c)(1)
of the Federal Estate Tax Regulations.

UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 7228-72

[Filed October 31, 1972]

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies, and alleges as follows:

1. Admits the allegations of paragraph 1. of the petition.
2. Admits the allegations of paragraph 2. of the petition.
3. Admits that the deficiency as determined by the Commissioner is in estate taxes in the amount of \$517.40; admits that petitioner has claimed an overpayment; denies the remaining allegations of paragraph 3. of the petition, and alleges that petitioner is not entitled to an overpayment.
4. (a). Denies the allegations of paragraph 4. (a) of the petition.
5. (a). Admits that the decedent, Joseph Vatter, left the residue of his estate to Genesee Valley Union

Docket No. 7228-72

[-2-]

Trust Company as trustee upon trusts set forth in his will; denies the remaining allegations of paragraph 5. (a) of the petition.

5. (b).and (c). Admits the allegations of paragraphs 5. (b) and (c) of the petition.

5. (d) through (h), inclusive. Denies the allegations of paragraphs 5. (d) through (h), inclusive, of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

{Sgd} Lee H. Henkel, Jr., - SMM

LEE H. HENKEL, JR.
Chief Counsel
Internal Revenue Service

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
BERNARD R. BAKER, III
Attorney
Internal Revenue Service
306 U. S. Courthouse
Niagara Square Station
Buffalo, New York 14202

UNITED STATES TAX COURT

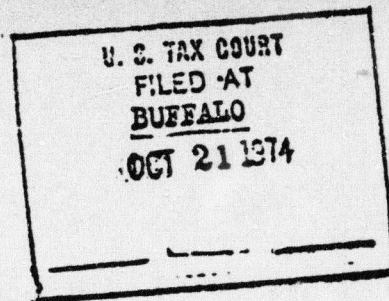
ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.



Docket No. 7228-72

CONSENT TO PETITIONER'S FILING
OF AMENDMENT TO PETITION

THE RESPONDENT CONSENTS, pursuant to the provisions of
Tax Ct. R. 41(a) to the petitioner's amendment to its
petition.

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

(Sgd) Stephen M. Miller

By:

Stephen M. Miller
Assistant Regional Counsel

Date: OCT 21 1974

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel

BERNARD R. BAKER III
Attorney
Internal Revenue Service
304 U.S. Courthouse
Niagara Square
Buffalo, New York 14202
Tel. No. (716) 842-5774

UNITED STATES TAX COURT

U. S. TAX COURT
FILED AT
BUFFALO
OCT 21 1914

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX

Petitioner,

-v-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET NO. 7228-72

AMENDMENT TO PETITION

The above named Petitioner hereby amends its petition, heretofore filed in the above proceeding, as follows:

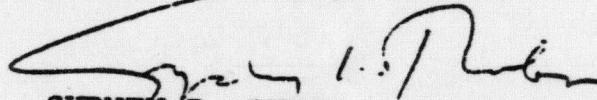
1. In view of the fact that the second sentence of Paragraph 5(a) of the Petition erroneously alleged that, "said Pullman Avenue and Arnett Boulevard properties constituted part of said residue" and respondent correctly denied said allegation, said second sentence of Paragraph 5(a) of the Petition is hereby deleted.

2. A new Paragraph 4(b) is hereby added to the Petition to read as follows:

"4(b). §20.2053-3(d)(2) of the Estate Tax Regulations does not prohibit the deduction of said selling expenses and closing costs in the circumstances of this case. In the alternative, if said provision of the regulations is construed to prohibit such deduction, then said provision is invalid in that it goes beyond, and is contrary to, the applicable statute, §2053(a) of the Internal Revenue Code of 1954 as amended."

WHEREFORE, the Petitioner prays that this Court may hear

this proceeding and determine that there is no deficiency due from the Petitioner as claimed in the notice of deficiency, and that there is an overpayment of estate taxes; and that the Court determine the amount of said overpayment, and grant such other and further relief as the nature of the case may warrant.


SYDNEY R. RUBIN
RUBIN, LEVEY AND BATTAGLIA, P.C.
Attorneys for Petitioner
950 Crossroads Building
Rochester, New York 14614

Dated: October 11, 1974

UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

U. S. TAX COURT
FILED -AT

BUFFALO
OCT 21 1974

Docket No. 7228-72

ANSWER TO AMENDMENT TO PETITION

THE RESPONDENT, in answer to the Amendment to Petition filed in the above-entitled case, admits and denies as follows:

5. (a) Neither admits nor denies the allegations of the second sentence of paragraph 5. (a) of the petition as set forth in paragraph 1 of the Amendment to Petition, on the grounds that said allegations have been stricken from the petition.

4. (b) Denies the allegations of error of paragraph 4. (b) of the petition as set forth in paragraph 2 of the Amendment to Petition.

Denies generally each and every allegation of the Amendment to Petition not hereinbefore specifically admitted, qualified or denied.

Date: OCT 21 1974

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
BERNARD R. BAKER III
Attorney
Internal Revenue Service
304 U.S. Courthouse
Buffalo, New York 14202
Tel. No. (716) 842-5774

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

(Sgd) Stephen M. Miller

By:

Stephen M. Miller
Assistant Regional Counsel

UNITED STATES TAX COURT

U. S. TAX COURT
FILED AT

BUFFALO
OCT 21 1974

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 7228-72

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, that the following facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true; and provided further, that both parties reserve the right to object to all or any of the facts herein stipulated on the ground of irrelevance or immateriality:

1. Joseph Vatter, [hereinafter sometimes referred to as "the decedent"] died testate on May 5, 1968, in the city of Rochester, New York. Joseph Vatter's social security number was 092-30-8496. His residence at the time of his death was 79 Gorsline Street, Rochester, New York 14613.

2. The United States Estate Tax Return in respect of the estate of Joseph Vatter was timely filed on July 28, 1969, with the District Director of Internal Revenue

Docket No. 7228-72

[- 2 -]

at Buffalo, New York. A true and correct copy of that return is attached hereto and marked "Joint Exhibit 1-A."

3. On "Schedule J" of that return are deducted, as expenses incurred in administering property of the estate, real estate commissions, closing costs and expenses incurred in complying with local multiple residence laws arising out of the sale of three parcels of real estate owned by the decedent at the time of his death, as follows:

261 Melville Street		
Real Estate Commissions	\$750.00	
Closing Costs	620.00	
Total		\$1370.00
367 Pullman Avenue		
Closing Costs	283.61	
Expenses for Compliance with multiple residence laws	702.07	
Real Estate Commissions	1230.00	
Total		\$2415.68*
783-85 Arnett Boulevard		
Closing Costs	1039.00	
Real Estate Commissions	1188.00	
Total		<u>\$2227.00</u>
Total deduction all three parcels		<u><u>\$6012.68*</u></u>

*Due to a mathematical error in the return, the deduction was overstated by \$200.00. The correct amount of the deduction in controversy is \$4442.68.

4. A true and correct copy of the Last Will and Testament of Joseph Vatter, executed on May 29, 1961, is attached hereto and marked "Joint Exhibit 2-B." In the paragraph designated "LASTLY" of his Will, Joseph Vatter nominated and appointed his wife, Anna Vatter as Executrix of his Last Will and Testament, and nominated and appointed the Genesee Valley Union Trust Company as Trustee for trusts set forth in other paragraphs of his Will. Said will was duly admitted to probate in the Surrogate's Court for Monroe County, State of New York, and Anna Vatter duly qualified as Executrix and Genesee Valley Union Trust Company duly qualified as Trustee thereunder.

5. In paragraph "eighth" of his Will, Joseph Vatter gave to his Executor and Trustee, among other powers, the power "to sell, at public or private sale, *** any property at any time held by them."

6. In paragraph "fourth" of his Will, Joseph Vatter gave the "rest, residue and remainder" of his property in trust to his Trustee to be held in trust for the various purposes therein set forth.

7. Pursuant to the power granted to her in paragraph "Eighth" of the Will of Joseph Vatter, Anna Vatter, as Executrix, took possession and control of the properties named in paragraph

3 above (hereinafter sometimes referred to as "Melville Street," "Pullman Avenue," and "Arnett Boulevard") and sold them in that capacity, incurring the expenses of sale more fully set forth in paragraph 7. Conveyance of all said properties was made by executor's deed.

8. The above properties were sold on the following dates and the gross and net proceeds from the sale of each were as follows:

<u>Property</u>	<u>Date</u>	<u>Gross</u>	<u>Net</u>
Melville St.	April 1, 1969	\$12,500.00	\$11,130.00
Pullman Ave.	March 28, 1969	\$20,500.00	\$18,084.32
Arnett Blvd.	June 10, 1969	\$19,800.00	\$17,573.00

9. On or about July 11, 1968, the amount of \$21,029.22, which represented the commuted value of the unpaid guaranteed installments arising out of a Metropolitan Life Insurance Company annuity, (Contract number 410 117 RB) was received by the Estate of Joseph Vatter.

10. The cash needs of the Estate of Joseph Vatter for the purposes below set forth amounted to \$24,648.64, computed as follows:

Expenses of administration

Funeral Expenses	\$1,633.50
Attorney's Fees	6,200.00
Guardian's Fees	200.00
Federal Taxes	7,123.87
State Taxes	2,500.00
TOTAL	\$17,657.37

Specific bequest

Adjusted marital deduction	\$110,842.46
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Value of property passing to spouse outside of Will or otherwise - from "Schedule M"	<u>103,851.19</u>
--	-------------------

Cash needed to fulfill specific bequest to wife under paragraph "Third" of Will	<u>\$6,991.27</u>
---	-------------------

Total cash needs of Estate for purposes above set forth	\$24,648.64
---	-------------

11. Of said total cash needs as described in paragraph 10 above for the purposes therein specified, the sum of \$21,029.22 was available from the proceeds of the annuity described in paragraph 9 above. Because of the difference between said sum of \$21,029.22 and said cash needs of \$24,648.64 as described in paragraph 10 hereof, respondent allowed the deduction as administration expenses of the expenses of sale relative to the Melville Street property as set forth in paragraph 3 hereof. Petitioner does not concede that she was entitled to raise only the cash necessary to satisfy the cash needs of the estate described in paragraph 10 above.

12. The expenses of sale enumerated in paragraph 3 above are reasonable in amount. No accounting, however, either

interim or final, has yet been filed with the Surrogate's Court. When said accounting is filed, petitioner intends to claim the expenses enumerated in paragraph 3 above as expenses of administration under New York Surrogate's Court Procedure Act, Article 22 (McKinney 1967) and New York Estates, Powers and Trusts Law §§11-1(b)(5) and 13-1.3(a)(1) (McKinney 1967).

13. Joseph Vatter acquired the Melville Street, Arnett Boulevard and Pullman Avenue properties at bank foreclosure sales during the years 1935 to 1940. During the year 1969, all of the properties in question were rental properties, Melville Street being a single family dwelling, Pullman Avenue being a four family dwelling and Arnett Boulevard being a two family dwelling.

14. In view of the age of the properties, it was necessary, from time to time, to expend sums for maintenance and repairs. It was also necessary to expend the sum set out in paragraph 3 above to comply with local multiple residence laws in order to sell the Pullman Avenue property.

15. The Genesee Valley Union Trust Company did not desire to have the above properties turned over to it as trustee under paragraph fourth of the will of Joseph Vatter. Therefore, at the bank's request, the executrix sold the

Docket No. 7228-72

[- 7 -]

properties on the open market and incurred the expenses of sale more fully set forth in paragraph 3 above.

16. The reasonable attorney's fees paid by petitioner in order to contest the deficiency herein are allowable administration expenses and will be taken into account in the computation following the Court's decision herein.

MEADE WHITAKER
Chief Counsel

Bi Sydney R. Nerke
Counsel for Petitioner

[sgd] Stephen M. Miller
By: Stephen M. Miller
Assistant Regional Counsel

GENERAL INFORMATION

1. Address of decedent at time of death (Number, street, city, State, and Postal ZIP code)
79 Gorsline St.
Rochester, N.Y. 14613

2. State in which domiciled at time of death
New York State

3. Year in which this domicile was established
1956

4. Place of death
Rochester, N.Y.

5. Cause of death
Heart Disease

6. Length of last illness
Less than 1 hr.

7. Decedent's physicians

NAMES	ADDRESSES (Number, street, city, State, and Postal ZIP code)
-------	--

Joseph A. Sergeant, M.D.

564 Ridge Rd. East, Rochester, N.Y. 14621

8. If decedent was confined in a hospital during his last illness or within 3 years prior to his death, give name and address of hospital
St. Mary's Hospital
Rochester, N.Y.

9a. Date of birth
8-11-1897

9b. Place of birth (City and State or country, if other than United States)
Germany

10a. Business or occupation
Retired

10b. If retired, state former business or occupation
Butcher

10c. Business name

10d. Decedent's employer identification number, if any

10e. Business address (Number, street, city, State, and Postal ZIP code)

11. Marital status of decedent at date of death
☒ Married ☐ Single ☐ Legally separated ☐ Widow or Widower ☐ Divorced

12a. Name of surviving husband or wife
Anna Vatter

12b. Social security number of surviving husband or wife
067-38-0646

12c. Date of marriage to surviving husband or wife
April 11, 1917

12d. Domicile at date of marriage to surviving husband or wife
Washington Hgts, N.Y.

13a. If decedent was a widow or widower, give name of deceased husband or wife

13b. Date of death of deceased husband or wife

14. Individuals who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule N or any heir receiving less than \$1,000)

Name.—Enter the name of each individual who receives benefits from the estate directly as an heir, next-of-kin, devisee or legatee or indirectly (for example, as beneficiary of a trust, shareholder of a corporation or partner of a partnership which is an heir, etc.).

Social Security Number.—If the individual has no social security number, use his taxpayer account number.

Age.—On the date of the decedent's death.

Relationship.—Include relationships by blood, marriage, or adoption or indicate NONE.

Amount.—Value all interests on the date of death or the alternate valuation date, whichever is used for estate tax purposes. The interest of each beneficiary should be valued in the same manner as it would be valued for estate or gift tax purposes. Where precise values cannot readily be determined, a reasonable approximation should be entered. The sum of the values of the interests of all unborn or otherwise unascertainable beneficiaries should be shown on the last line (all unascertainable beneficiaries).

Name	Social Security Number	Age	Relationship to Decedent	Amount
Anna Vatter	067-38-0646	71	Surviving Spouse	108,521.00
Marine Midland Trust Co.			Trustee	99,314.65

All unascertainable beneficiaries.....

ESTATE OF JOSEPH VATTER

GENERAL INFORMATION—Continued

15a. Did the decedent at date of death own property in any State or country other than that of his last domicile?
If "Yes," state place of ancillary probate proceedings ☐ Yes ☒ No

15b. Name of ancillary administrator or executor

15c. Address of ancillary administrator or executor (Number, street, city, State, and Postal ZIP code)

16a. Did the decedent at the time of his death have a safe deposit box held either alone or in the joint names
of himself and another?
If "Yes," state location ☐ Yes ☒ No

16b. If held jointly, give the name of the joint depositor

16c. Relationship of joint depositor to decedent

16d. If the decedent had a safe deposit box at the time of his death, indicate by schedule and item number under what schedules in this
return the contents are listed

16e. If any of the contents of the safe deposit box are omitted from the schedules, explain fully why omitted

17. Did the undersigned person or persons filing return make diligent and careful search for property of every kind left
by the decedent? ☒ Yes ☐ No

18. Did the same undersigned make diligent and careful search for information as to any transfers (other than outright
transfers not in trust) of the value of \$5,000 or more made by the decedent during his lifetime without an adequate
and full consideration in money or money's worth? ☒ Yes ☐ No

19. Did the same undersigned make diligent and careful search for the existence of any trusts created by the decedent
during his lifetime or any trusts created by other persons under which the decedent possessed any power, beneficial
interest, or trusteeship? ☒ Yes ☐ No

20a. Name of attorney representing estate, if any
William J. Frank

20b. Address (Number, street, city, State, and Postal ZIP code)
45 Exchange Street
Rochester, N.Y. 14614

20c. Telephone No.
546 6345

ALTERNATE VALUATION

These instructions apply only if alternate valuation is elected. For further information on this subject, see General Instructions
on page 4)

21. An election to have the gross estate of the decedent valued as of the alternate date or dates is made by entering a check mark in the
box set forth below.
- ☐ The executor elects to have the gross estate of this decedent valued in accordance with values as of a date or dates subsequent to the de-
cedent's death as authorized by section 2032 of the Code.

ESTATE OF JOSEPH VATTER

Page 5

**GROSS ESTATE
SCHEDULE A
REAL ESTATE**

Did the decedent, at the time of his death, own any real estate required to be included in the gross estate? See General Instruction I, page 4. ☐ Yes ☐ No

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1	See Attached		\$	\$
2	"			
3	"			
4	"			
5	"			
TOTAL (also enter under the Recapitulation, Schedule O)			\$	\$ 94,300.00

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule A—Page 7

Schedule A - Real Estate

Value at date of death

1. Dbl 1997-1999 Dewey Ave., Rochester, Monroe County, N.Y.
known as Lot #18 of Addison B. Filmore's Sbn. No. 2 of
part of Town Lot 60, Township 1, Short Range as
surveyed by W. Fred Sullivan, surveyor July 1926 and filed
Liber 67 of Maps, page 19 in Monroe County Clerk's office.
Assessed Value \$ 9,000.00
See Appraisal \$ 20,500.00
 2. Dbl. 190 Lark/257 Kislisbury Sts., Rochester, Monroe
County, N.Y. described as Lot #178 as shown on map of
Rochester Driving Park Tract made by J.C. Ryan, Surveyor,
filed in Monroe County Clerk's Office Liber 15 of Maps
page 33, being subdivision of parts of Town Lots 34, 35,
and 36 in the 20,000 Acre Tract Township 1, Short Range,
west of the Genesee River.
Assessed value \$ 8,800.00
See Appraisal 21,000.00
 3. Dbl. 783-85 Arnett Blvd., Rochester, Monroe County, N.Y.
described as Lot No. 34 Arnett Blvd as shown on an amended
map of a part of Westgate Terrace Resubdivision of part of
Young's Subdivision of Lots 9 and 10 of the 4,000 Acre Tract
and 168 of the 20,000 Acre Tract filed Monroe County Clerk's
office in Liber 55 of Maps, page 36.
Assessed Value \$ 9300.00
See Affidavit 19,800.00
 4. 367 Pullman Ave. (4 Apts). Rochester, Monroe County, N.Y.
described as Lot #3 of Julius Lebowitz Resubdivision of
lots 317 and 318 of the Britton Tract as shown on a re-
subdivision map filed in Monroe County Clerk's office in
Liber 64 of Maps at page 31.
Assessed value \$ 11,200.00
See Affidavit 20,500.00
 5. 261 Melville St., Rochester, Monroe County, N.Y. being
Lot #14 on a certain map entitled "Plan of Building Lots
at Eastside, being a subdivision of the south-west part
of Town Lot 41, Township 13, Range 7, Rochester, N.Y.
surveyed for Walter B. Perkins by J.C. Ryan, Surveyor,
April 1906 and filed in Monroe County Clerk's office Liber 14
of Maps page 36.
Assed value \$ 4700.00
See Affidavit 12,500.00
- \$ 94,300.00

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

William J. Frank being duly sworn deposes and says:

That he is the attorney for the estate of Joseph Vatter.

That this affidavit is made for the purpose of showing the sale of three parcels of real property owned by the decedent at the time of his death, to establish for tax purposes the value of the property at the date of death of the decedent.

That no appraisal was obtained for these two parcels for the reason that they were sold shortly after the death of decedent and the sale price for which they were sold to uninterested parties establishes the value of the property at the date of the decedent's death.

Re: Item No. 3 Schedule A of Federal Estate Tax form, 783-85 Arnett Blvd. Rochester, N.Y., attached hereto and made part of this affidavit, is copy of purchase offer made by Robert McRae through Regis Mooney, Inc. Realtor, for the sale price of \$19,800, which value is placed on this property in Schedule A of the Estate Tax Return.

Re: Item No. 4 Schedule A of Federal Estate Tax form, 367 Pullman Ave., Rochester, N.Y., attached hereto and made part of this affidavit, is the copy of contract entered into by the executor of the estate of Joseph Vatter with disinterested third party February 4, 1969, William A. Feldman, Realtor. Under said contract the property known as 367 Pullman Ave., Rochester, N.Y. was sold for the price of \$20,500 which value is placed on the property in the Estate Tax Return.

Re: Item No. 5 Schedule A of Federal Estate Tax form, 261 Melville St. Rochester, N.Y. attached hereto and made part of this affidavit is the purchase offer made by James Williams through Elliott H. Press for the sale of the above property, sale price \$12,500, which value was placed on said property in Schedule A of the Federal Estate Tax Return.

These values were established by bona fide sale of the properties to persons not interested in the estate and through reputable real estate brokers

Sworn to before me
this 25 day of July, 1969

Marilyn M. Schott

MARILYN M. SCHOTT
NOTARY PUBLIC, State of N. Y., Monroe County
My Commission Expires: May 30, 1971

WILLIAM J. FRANK
ATTORNEY AT LAW
ROCHESTER, N. Y.



Purchase Offer

I agree to purchase the following property situate on the South side of Pullman Avenue
Lot No. 3, known as house No. 367; in the City of Rochester
county of Monroe, state of New York.

Lot size as per deed of conveyance to you, together with all buildings thereon.

Purchase price to include all appurtenances and improvements such as, but not limited to plumbing, heating and lighting fixtures, shades and screens; storm windows and storm doors, awnings and venetian blinds, if any, now therein and belonging to the property.

Purchase price: Twenty Thousand Five Hundred Dollars - - - - - (\$ 20,500.00)

Terms: All cash at time of transfer.

Subject to the rights of the tenants therein. It is agreed and understood that all tenants are on a month to month basis with no lease.

You to furnish Certificate of Occupancy.

You to furnish warranty deed, tape location map, guaranteed tax and title searches and Federal Bankruptcy Search to time of transfer showing good marketable title free of liens and encumbrances, except as above specified, and subject to pole and wire easements and restrictions running with the land common to the tract or subdivision. Risk of loss or damage by fire until closing is assumed by seller.

It is understood that the premises comply with existing Zoning Regulations and the Multiple Residence Law, if applicable. You also certify that there are no outstanding notices, orders, or directives of violations from governmental agencies having authority, affecting said premises. Within ten days after my written request, you will furnish a Certificate of Compliance with Zoning Regulations and the Multiple Residence Law and if there are any exceptions therein, you will at your option remedy the same before closing or this contract shall be null and void.

All taxes, interest, ~~rents~~, rents and water to be adjusted to date of transfer. Any bond and mortgage given shall contain the statutory clause as to interest, principal, insurance, tax and assessments, upon default of thirty days. I to pay any mortgage tax and recording fee required.

My attorney to have abstract of title and tax searches for examination at least three days before closing.

The transfer to be completed at the office of Monroe County Clerk
on or before the 28 day of February, 1969.

This offer good until February 7, 1969

Upon Acceptance

I herewith deposit One Thousand Two Hundred Thirty & No/100 Dollars (\$ 1,230.00)
of the above purchase price with W. A. FELDMAN, REALTOR, to be held until this offer is accepted,
at which time it shall become part of the purchase price, or returned if not accepted.

Dated February 4, 1969 Angela P. Butler (L. S.)

Witness Nancy Ann Hedberg (L. S.)

Acceptance

I hereby accept the above offer and agree to sell on the terms and conditions set forth and pay W. A. FELDMAN, REALTOR, the regular commission and the deposit here made may be applied thereon.

Dated 2/7/69 Anna Vetter (L. S.)

Witness W. A. Feldman (L. S.)



Purchase Offer



Form approved and published by the Real Estate Board of Rochester, N. Y., Inc., August 28, 1963. A partial schedule of the prevailing minimum rates of brokerage commission is set out on the reverse side hereof.

We I agree to purchase the following property situate in the City of Rochester, County of Monroe and the State of New York, known and described as 783-785 Arnett Boulevard. Lot size as per Deed to you 42 x 130. Property consists of aforementioned lot, together with a 2 1/2 story 2 family frame dwelling and a 2-car detached garage, now thereon.

PURCHASE PRICE: Nineteen Thousand (\$19,000.00) Dollars.

TERMS: We will pay all cash at the time of closing.

This offer is subject to us obtaining an F.H.A. Mortgage in the approximate amount of Seventeen Thousand (\$17,000.00) Dollars, for a period of twenty-five (25) years. We will apply immediately for said bank mortgage and request ten (10) banking days to have the application accepted for processing after which time, if not accepted, this offer shall become null and void.

Seller to pay bank discount fee not to exceed 3% of the mortgage applied for. You are to furnish a Certificate of Occupancy.

Possession and closing on or about June 1, 1969.

This offer is subject to the rights of tenants now occupying said premises.

Subject to my attorney's approval as to form and text.

The above property shall include all appurtenances and improvements such as, but not limited to, plumbing, heating and lighting fixtures, shades and screens, storm windows and storm doors, awnings and venetian blinds, if any, now therein and belonging to the property.

Risk of loss or damage by fire until closing is assumed by the seller to the amount of the insurance now in force, and the fact of such loss or damage shall not relieve either party, from performance.

You agree to furnish warranty deed, tape location map, guaranteed tax and title searches, and United States District Court search to time of transfer showing good marketable title free of liens and encumbrances, except as above specified, and subject to pole and wire easements and restrictions running with the land common to the tract or subdivision. It is understood that the premises comply with existing Zoning Regulations and the Multiple Residence Law if applicable. You also certify that there are no outstanding notices, orders, or directives of violations from governmental agencies having authority, affecting said premises. Within ten days after my written request, you will furnish a Certificate of Compliance with Zoning Regulations and the Multiple Residence Law and if there are any exceptions therein, you will at your option remedy the same before closing or this contract shall be null and void.

Taxes, interest, fire insurance, rents and water shall be adjusted to date of transfer, except if fire insurance is included in a so-called "Package Policy," the adjustment of said policy is to be made optional with either buyer or seller. Any bond and mortgage given shall contain the statutory clauses as to interest, principal, insurance, and assessments, upon default of thirty days. I agree to pay any mortgage tax and recording fee required. This offer good until the 8th day of April 1969 at 6 PM o'clock and is irrevocable for the time stated herein. The transfer shall be completed at the office of the Monroe County Clerk on or before the 1st day of June 1969.

My attorney shall have searches for examination at least five days before closing.

I herewith deposit One Thousand One Hundred Forty Dollars (\$ 1,140.00) (NOTE) of the above purchase price with REGIS MOONEY, INC. REALTOR, to be held until this offer is accepted, at which time it shall become part of the purchase price, or returned, if not accepted. I agree to pay the prevailing minimum brokerage commission if I fail to complete my part of this agreement.

Dated April 3, 1969

Robert E. McRae (L.S.)

Witness George T. Coon

Karyl McRae (L.S.)

Acceptance

I hereby accept the above offer and agree to sell on the terms and conditions set forth and to pay REGIS MOONEY, INC., REALTOR, prevailing minimum brokerage commission and the deposit here made may be applied thereon, except that Purchase Price is Nineteen Thousand Eight Hundred (\$19,800.00) Dollars.

Dated April 8, 1969

Anna Vatter (L.S.)

Witness W. J. Frank

(L.S.)



Purchase Offer



Form approved and published by the Real Estate Board of Rochester, N. Y., Inc., August 25, 1963. A partial schedule of the prevailing minimum rates of brokerage commission is set out on the reverse side hereof.

We agree to purchase the following property situate in the City of Rochester, County of Monroe, State of New York, known and described as 261 Melville Street. Aforementioned property is a 7 room frame single dwelling with detached 2-car garage. Lot size is 40' x 100', as per deed to you. It is understood the lot extends to the rear fence.

Price: Twelve Thousand and Five Hundred Dollars (\$12,500.00).

Terms: All cash on date of transfer. We agree to place about \$500.00 as a down payment and to apply for a F.H.A. mortgage in the approximate amount of \$12,000.00, to be amortized over a 20 or 25 year period at the present rate of interest. Seller agrees to pay the required points to the lender.

Deposit as indicated below shall be returned in event the offer to buy or the mortgage requested is refused and we are to be mutually released without obligation.

Possession to be on transfer of title.

Close April 1 / 2 PM
Gruswald

The above property shall include all appurtenances and improvements such as, but not limited to, plumbing, heating and lighting fixtures, shades and screens, storm windows and storm doors, awnings and venetian blinds, if any, now therein and belonging to the property.

Risk of loss or damage by fire until closing is assumed by the seller to the amount of the insurance in force, and the fact of such loss or damage shall not relieve either party of its performance.

You agree to furnish warranty deed, tape location map, guaranteed tax and title searches, and United States District Court search to time of transfer showing good marketable title free of liens and encumbrances, except as above specified, and subject to pole and wire easements and restrictions running with the land common to the tract or subdivision. It is understood that the premises comply with existing Zoning Regulations and the Multiple Residence Law if applicable. You also certify that there are no outstanding notices, orders, or directives of violations from governmental agencies having authority, affecting said premises. Within ten days after my written request, you will furnish a Certificate of Compliance with Zoning Regulations and the Multiple Residence Law and if there are any exceptions therein, you will at your option remedy the same before closing or this contract shall be null and void.

Taxes, interest, fire insurance, rents and water shall be adjusted to date of transfer, except if fire insurance is included in a so-called "Package Policy," the adjustment of said policy is to be made optional with either buyer or seller. Any bond and mortgage given shall contain the statutory clauses as to interest, principal, insurance, tax and assessments, upon default of thirty days. I agree to pay any mortgage tax and recording fee required. This offer good until the 27th day of January 1969 at 6 P.M. and is irrevocable for the time stated herein. The transfer shall be completed at the office of the Monroe County Clerk on or before the 1st day of April 1969.

My attorney shall have searches for examination at least five days before closing.

I herewith deposit Six Hundred and Thirty Dollars (\$ 630.00) of the above purchase price with Elliott H. Press REALTOR, to be held until this offer is accepted, at which time it shall become part of the purchase price, or returned, if not accepted. I agree to pay the prevailing minimum brokerage commission if I fail to complete my part of this agreement.

Dated January 24 1969 James H. Williams (L. S.)

Witness Seymour J. Baskin Fannie Joyce Williams (L. S.)

Acceptance

I hereby accept the above offer and agree to sell on the terms and conditions set forth and to pay Elliott H. Press, REALTOR, prevailing minimum brokerage commission and the deposit here made may be applied thereon.

Dated January 27 1969 Anna Vatter, Exec. (L. S.)

Witness W. J. Frank Estate of Joseph Vatter (L. S.)

AFFIDAVIT OF APPRAISAL

257 Kissingbury St. & 190 Lark St.
City of Rochester
County of Monroe
State of New York
Estate of Joseph Vatter

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

THOMAS S. WILLS, III, being duly sworn, hereby deposes and says:

1. That he has been engaged in the real estate profession since 1962; that he is licensed by the State of New York as a real estate broker; that he is a graduate of Syracuse University with a major in real estate;
2. That he is a member of the New York State Society of Real Estate Appraisers; that he is an Associate Broker member of the Real Estate Board of Rochester; that he is an associate member of the New York State Association of Real Estate Boards;
3. That he is actively engaged in the appraisal of real estate having made appraisals for such clients as IBM, Xerox, Gerber Products, Town of Perinton, City of Hornell, Village of Potsdam, Village of Fairport, Marine Midland Trust Co., and various Rochester attorneys and individuals and that he has testified as an expert witness before the City of Rochester Zoning Board of Appeals, New York State Supreme Court, and New York State Court of Appeals;
4. That he has no present or contemplated interest in the property;
5. That his fee is not contingent upon the value reported;
6. That the property is currently assessed by the City of Rochester as account number 14617 as follows:

Land	\$1,250
Improvements	7,550
Total	\$8,800

7. That the property is currently zoned "R-2" Residential by the City of Rochester which permits its present use;
8. That the property consists of a 2½ story, frame, 2 family, semi-detached residence. Each unit has 6 rooms being living room, dining room, old style kitchen, 3 bedrooms, old style bath, and 2 porches. Basement is full and is divided for each unit. Each unit has separate hot air furnaces, and 30 gallon hot water heaters. There is a 2 car detached garage. General condition of the structure is good with need for exterior painting. The subject is approximately 50 years in age and is situate on a 40 X 129 lot on the south side of Kissingbury St. and the east side of Lark St.
9. That in his opinion the fair market value of the subject property as of May 5, 1968, was:

TWENTY ONE THOUSAND (\$21,000) DOLLARS.

Sworn to before me this
14th day of June 1969.

Annella M. Simmons
NOTARY PUBLIC
ANNELLA M. SIMMONS
NOTARY PUBLIC, State of N. Y., Monroe County
My Commission Expires March 30, 1971

Thomas S. Wills III
THOMAS S. WILLS, III, N. Y. S. A. S.

AFFIDAVIT OF APPRAISAL

1997-1999 Dewey Avenue
City of Rochester
County of Monroe
State of New York
Estate of Joseph Vatter

STATE OF NEW YORK)
) SS.
COUNTY OF MONROE)

THOMAS S. WILLS, III, being duly sworn, hereby deposes and says:

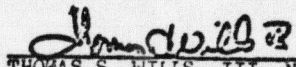
1. That he has been engaged in the real estate profession since 1962; that he is licensed by the State of New York as a real estate broker; that he is a graduate of Syracuse University with a major in real estate;
2. That he is a member of the New York State Society of Real Estate Appraisers; that he is an Associate Broker member of the Real Estate Board of Rochester; that he is an associate member of the New York State Association of Real Estate Boards;
3. That he is actively engaged in the appraisal of real estate having made appraisals for such clients as IBM, Xerox, Gerber Products, Town of Perinton, City of Hornell, Village of Potsdam, Village of Fairport, Marine Midland Trust Co., and various Rochester attorneys and individuals and that he has testified as an expert witness before the City of Rochester Zoning Board of Appeals, New York State Supreme Court, and New York State Court of Appeals;
4. That he has no present or contemplated interest in the property;
5. That his fee is not contingent upon the value reported;
6. That the property is currently assessed by the City of Rochester as account number 12033 as follows:

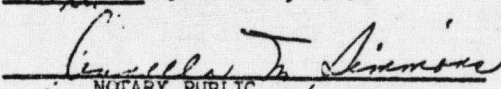
Land	\$1,120
Improvements	7,880
Total	\$9,000

7. That the property is currently zoned "R-2" Residential by the City of Rochester which permits its present use;
8. That the property consists of a 2½ story, frame, 2 family, boston style residence. Each unit has 5 rooms being living room, dining room, old style kitchen, 2 bedrooms, old style bath and porch. Basement is full with separate gas fired hot air heating systems and 2 gas fired hot water heaters. Roof is concrete tile, siding is painted wood shingle. There is a four car frame 36' X 18' garage at the rear of the lot. The driveway and parking area are blacktop. The subject is situate on a 41.68 X 140 lot and is generally in good condition.
9. That in his opinion the property had a fair market value as of May 5, 1968, of:

TWENTY THOUSAND FIVE HUNDRED (\$20,500) DOLLARS.

Sworn to before me this
13th day of June, 1969.


THOMAS S. WILLS, III, N. Y. S. A. S.


NOTARY PUBLIC
ANNELLA M. SIMMONS
NOTARY PUBLIC, State of N. Y., Monroe County
My Commission Expires March 30, 1971

SCHEDULE B
STOCKS AND BONDS

1. Did the decedent, if a resident or citizen of the United States, own any stocks or bonds, regardless of physical location, at the time of his death? ☒ Yes ☐ No

2. Did the decedent, if a nonresident not a citizen of the United States, own, at the time of his death, any stocks of corporations organized in the United States or bonds situated in the United States as explained in the instructions? ☐ Yes ☐ No

Item No.	Description (including face amount of bonds or number of shares)	Per	Unit value	Subsequent valuation date	Alternate value	Value at date of death
1	100 sh. Niagra Mohawk		19 1/2		\$	\$ 1,950.00
2	766 sh. Genesee Brewing Co.		13			9,958.00
TOTAL (also enter under the Recapitulation, Schedule O)						\$ 11,908.00

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule B—Page 9

SCHEDULE C
MORTGAGES, NOTES, AND CASH

Did the decedent, at the time of his death, own any mortgages, notes, or cash?

☒ Yes ☐ No

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1	Community Savings Bank #D 31495 Joseph Vatter in Trust for Anna Vatter		\$	\$ 10,906.66
TOTAL (also enter under the Recapitulation, Schedule O)			\$	\$ 10,906.66

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule C—Page 11

**SCHEDULE D
INSURANCE**

1a. Was any insurance on life of decedent receivable by his estate?

☐ Yes ☒ No

1b. By beneficiaries other than estate?

☒ Yes ☐ No

2. Was there any insurance on the decedent's life which is not included in the return as a part of the gross estate?


☐ Yes ☒ No If "Yes," a complete explanation as to all such insurance must be submitted.

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1	Metropolitan Life Ins. Policy #4565 393 Face amount \$5,000 Beneficiary Anna Vatter		\$	\$ 5,994.00
2	Metropolitan Life Ins. Policy #11 261 125A Face amount \$6,406.00 Beneficiary Anna Vatter			8,928.00
3	Metropolitan Life Ins. Policy #13 883 850A Face amount \$10,000 Beneficiary Anna Vatter			13,050.00
4	Metropolitan Life Ins. Policy #12 882 153A Face amount \$5,373 Beneficiary Anna Vatter			5,373.00
TOTAL (also enter under the Recapitulation, Schedule O)				\$ 33,345.00

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule D—Page 13

FORM 712 (REV. MAY 1964)	U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE LIFE INSURANCE STATEMENT (To be filed by Executor with Federal Estate Tax Return, Form 706)	
Enter these items on Schedule D, Form 706	1. NAME OF INSURANCE COMPANY Metropolitan Life Insurance Company, New York, N. Y. 10010	
	2. NAME OF DECEDENT (Insured) Vatter, Joseph	
	3. KIND OF POLICY Whole Life Policy	4. NO. OF POLICY 4 565 393 A
	5A. NAMES OF BENEFICIARIES Anna Vatter	
	5B.	5C.
	6. FACE AMOUNT OF POLICY \$5,000.00 Plus 994.00 Add'l Ins.	7. PRINCIPAL OF ANY INDEBTEDNESS TO THE COMPANY DEDUCTIBLE IN DETERMINING NET PROCEEDS
	8. INTEREST ON INDEBTEDNESS (Item 7) ACCRUED TO DATE OF DEATH	9. AMOUNT OF ACCUMULATED DIVIDENDS
	10. AMOUNT OF RETURNED PREMIUM	11. AMOUNT OF PROCEEDS IF PAYABLE IN ONE SUM \$6223.05 Includes amounts entered in items 6 and 10
	12. VALUE OF PROCEEDS AS OF DATE OF DEATH (If not payable in one sum)	13. AMOUNT OF PREMIUM \$89.90 Ann.
	14. DATE OF BIRTH OF INSURED 5-5-68	
15. DATE OF ISSUE OF POLICY 4-28-1926		
16. AMOUNT OF PREMIUM \$89.90 Ann.		
17A. PROVISIONS OF POLICY WITH RESPECT TO THE DEFERRED PAYMENTS OR TO THE INSTALLMENTS (NOTE: Where marital deduction under Code section 2056 is involved, if other than lump sum settlements authorized, copy of insurance policy should be attached.)		
5994- 223.23- 5994-23		
17B. AMOUNT OF INSTALLMENTS	17C. DATE OF BIRTH AND NAME OF ANY PERSON THE DURATION OF WHOSE LIFE MAY MEASURE THE NUMBER OF PAYMENTS	17D. AMOUNT APPLIED BY THE INSURANCE COMPANY AS A SINGLE PREMIUM REP- RESENTING THE PURCHASE OF IN- STALLMENT BENEFITS
17E. BASIS (Mortality table and rate of interest) USED BY INSURER IN VALUING INSTALLMENT BENEFITS		
18. WAS THE INSURED THE ANNUITANT OR BENEFICIARY OF ANY ANNUITY CONTRACT ISSUED BY THE COMPANY? <input type="checkbox"/> YES <input type="checkbox"/> NO		
19. NAMES OF COMPANIES WITH WHICH DECEDENT CARRIED OTHER POLICIES AND AMOUNT OF SUCH POLICIES IF THIS INFORMATION IS DISCLOSED BY YOUR RECORDS		
The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.		
DATE OF CERTIFICATION 1g 11-6-68p	SIGNATURE 	TITLE Sr. Claim Approver

INSTRUCTIONS

PURPOSE OF STATEMENT.—The information shown by this state-
ment is required for the purpose of determining the statutory gross
estate of the insured for Federal estate tax purposes.

STATEMENT OF INSURER.—This statement must be made, on behalf
of the insurance company which issued the policy, by an officer of
the company having access to the records of the company. For
purposes of this statement, a facsimile signature may be used in lieu
of a manual signature and, if used, shall be binding as a manual
signature.

DUTY TO FILE.—It is the duty of the executor to procure this
statement from the insurance company and file it with the return.
However, if specifically requested, the insurance company should
file this statement direct with the official of the Internal Revenue
Service making the request.

SEPARATE STATEMENTS.—A separate statement must be filed for
each policy listed on the return.

FORM 712
(REV. MAY 1964)

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Enter
these
items
on
Schedule D,
Form 706

1. NAME OF INSURANCE COMPANY Metropolitan Life Insurance Company, New York, N. Y. 10010	
2. NAME OF DECEDENT (Insured) Vatter, Joseph	
3. KIND OF POLICY Whole Life Policy	4. NO. OF POLICY 11 261 125 A
5A. NAMES OF BENEFICIARIES Anna Vatter	5B.
5C.	5D.
6. FACE AMOUNT OF POLICY \$6,406.00 Plus 2,522.00 Add'l Ins.	7. PRINCIPAL OF ANY INDEBTEDNESS TO THE COMPANY DEDUCTIBLE IN DETERMINING NET PROCEEDS
8. INTEREST ON INDEBTEDNESS (Item 7) ACCRUED TO DATE OF DEATH	9.
9. AMOUNT OF ACCUMULATED DIVIDENDS	10. AMOUNT OF POST-MORTEM DIVIDENDS 38.30 Div. to Policyholder 288.27 Terminal Dividend
11. AMOUNT OF RETURNED PREMIUM	12.
12. AMOUNT OF PROCEEDS IF PAYABLE IN ONE SUM \$9,254.57 Includes amounts entered in items 6 and 10	13. VALUE OF PROCEEDS AS OF DATE OF DEATH (If not payable in one sum)

DATE OF DEATH OF INSURED
5-5-68

15. DATE OF ISSUE OF POLICY
1-4-1937

16. AMOUNT OF PREMIUM
\$164.63 Ann.

17A. PROVISIONS OF POLICY WITH RESPECT TO THE DEFERRED PAYMENTS OR TO THE INSTALLMENTS (NOTE: Where marital deduction under Code section 2056 is involved, if other than lump sum settlement authorized, copy of insurance policy should be attached.)

17B. AMOUNT OF INSTALLMENTS	17C. DATE OF BIRTH AND NAME OF ANY PERSON THE DURATION OF WHOSE LIFE MAY MEASURE THE NUMBER OF PAYMENTS	17D. AMOUNT APPLIED BY THE INSURANCE COMPANY AS A SINGLE PREMIUM REPRESENTING THE PURCHASE OF INSTALLMENT BENEFITS
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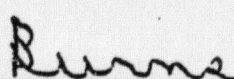
17E. BASIS (Mortality table and rate of interest) USED BY INSURER IN VALUING INSTALLMENT BENEFITS

18. WAS THE INSURED THE ANNUITANT OR BENEFICIARY OF ANY ANNUITY CONTRACT ISSUED BY THE COMPANY?

☐ YES ☐ NO

19. NAMES OF COMPANIES WITH WHICH DECEDENT CARRIED OTHER POLICIES AND AMOUNT OF SUCH POLICIES IF THIS INFORMATION IS DISCLOSED BY YOUR RECORDS

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

DATE OF CERTIFICATION 1g 11-6-68p	SIGNATURE 	TITLE sr/ Claim Approver
--------------------------------------	--	-----------------------------

INSTRUCTIONS

PURPOSE OF STATEMENT.—The information shown by this statement is required for the purpose of determining the statutory gross estate of the insured for Federal estate tax purposes.

STATEMENT OF INSURER.—This statement must be made, on behalf of the insurance company which issued the policy, by an officer of the company having access to the records of the company. For purposes of this statement, a facsimile signature may be used in lieu of a manual signature and, if used, shall be binding as a manual signature.

DUTY TO FILE.—It is the duty of the executor to procure this statement from the insurance company and file it with the return. However, if specifically requested, the insurance company should file this statement direct with the official of the Internal Revenue Service making the request.

SEPARATE STATEMENTS.—A separate statement must be filed for each policy listed on the return.

FORM 712
(REV. MAY 1966)

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Enter
these
items
on
Schedule D,
Form 706

1. NAME OF INSURANCE COMPANY

Metropolitan Life Insurance Company, New York, N. Y. 10010

2. NAME OF DECEDENT (Insured)

Vatter, Joseph

3. KIND OF POLICY

Whole Life Policy

4. NO. OF POLICY

12 882 153 A

5A. NAMES OF BENEFICIARIES

Anna Vatter

5B.

5C.

5D.

6. FACE AMOUNT OF POLICY

\$5,373.00

7. PRINCIPAL OF ANY INDEBTEDNESS TO THE COMPANY DEDUCTIBLE IN DETERMINING NET PROCEEDS

8. INTEREST ON INDEBTEDNESSES (Item 7) ACCRUED TO DATE OF DEATH

9. AMOUNT OF ACCUMULATED DIVIDENDS

\$1622.14 Dividends with Interest

10. AMOUNT OF POST-MORTEM DIVIDENDS

26.01 Dividend to Policyholder
241.79 Terminal Dividend

11. AMOUNT OF RETURNED PREMIUM

\$

12. AMOUNT OF PROCEEDS IF PAYABLE IN ONE SUM

\$7262.94 Includes amounts entered in items 9 and 10

13. VALUE OF PROCEEDS AS OF DATE OF DEATH. (If not payable in one sum)

\$

14. DATE OF DEATH OF INSURED
5-5-68

15. DATE OF ISSUE OF POLICY

1-26-1940

16. AMOUNT OF PREMIUM

\$153.56 Ann.

17A. PROVISIONS OF POLICY WITH RESPECT TO THE DEFERRED PAYMENTS OR TO THE INSTALLMENTS (NOTE: Where marital deduction under Code section 2056 is involved, if other than lump sum settlement authorized, copy of insurance policy should be attached.)

17B. AMOUNT OF INSTALLMENTS

\$

17C. DATE OF BIRTH AND NAME OF ANY PERSON THE DURATION OF WHOSE LIFE MAY MEASURE THE NUMBER OF PAYMENTS

17D. AMOUNT APPLIED BY THE INSURANCE COMPANY AS A SINGLE PREMIUM REPRESENTING THE PURCHASE OF INSTALLMENT BENEFITS

\$

17E. BASIS (Mortality table and rate of interest) USED BY INSURER IN VALUING INSTALLMENT BENEFITS

18. WAS THE INSURED THE ANNUITANT OR BENEFICIARY OF ANY ANNUITY CONTRACT ISSUED BY THE COMPANY?

☐ YES

☐ NO

NAMES OF COMPANIES WITH RECORDS

DECEDENT CARRIED OTHER POLICIES AND AMOUNT OF SUCH POLICIES IF THIS INFORMATION IS DISCLOSED BY YOUR RECORDS

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

DATE OF CERTIFICATION

1968-1-1

SIGNATURE

Burns

TITLE

Sr. Claim Approver


INSTRUCTIONS

PURPOSE OF STATEMENT.—The information shown by this statement is required for the purpose of determining the statutory gross estate of the insured for Federal estate tax purposes.

STATEMENT OF INSURER.—This statement must be made, on behalf of the insurance company which issued the policy, by an officer of the company having access to the records of the company. For purposes of this statement, a facsimile signature may be used in lieu of a manual signature and, if used, shall be binding as a manual signature.

DUTY TO FILE.—It is the duty of the executor to procure this statement from the insurance company and file it with the return. However, if specifically requested, the insurance company should file this statement direct with the official of the Internal Revenue Service making the request.

SEPARATE STATEMENTS.—A separate statement must be filed for each policy listed on the return.

FORM 712 (REV. MAY 1966)	U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE LIFE INSURANCE STATEMENT (To be filed by Executor with Federal Estate Tax Return, Form 706)	
Enter these items on Schedule D, Form 706	1. NAME OF INSURANCE COMPANY Metropolitan Life Insurance Company, New York, N. Y. 10010	
	2. NAME OF DECEDENT (Insured) Joseph Vatter	
	3. KIND OF POLICY Whole Life Policy	4. NO. OF POLICY 13 883 850 A
	5A. NAMES OF BENEFICIARIES Anna Vatter	
	5B.	5C.
	6. FACE AMOUNT OF POLICY \$10,000.00 Plus 3050.00 Add'l Ins.	
	7. PRINCIPAL OF ANY INDEBTEDNESS TO THE COMPANY DEDUCTIBLE IN DETERMINING NET PROCEEDS \$	
	8. INTEREST ON INDEBTEDNESS (Item 7) ACCRUED TO DATE OF DEATH \$	9. AMOUNT OF ACCUMULATED DIVIDENDS \$
	10. AMOUNT OF POST-MORTEM DIVIDENDS 61.29 Div. to Policyholder 450.00 Terminal Dividend	
	11. AMOUNT OF RETURNED PREMIUM \$	
12. AMOUNT OF PROCEEDS IF PAYABLE IN ONE SUM \$13,561.29 Includes amounts entered in items 6 and 10		
13. VALUE OF PROCEEDS AS OF DATE OF DEATH (If not payable in one sum) \$		
14. DATE OF DEATH OF INSURED 5-5-68	15. DATE OF ISSUE OF POLICY 12-17-1941	16. AMOUNT OF PREMIUM \$308.20 Ann.
17A. PROVISIONS OF POLICY WITH RESPECT TO THE DEFERRED PAYMENTS OR TO THE INSTALLMENTS (NOTE: Where marital deduction under Code section 2056 is involved, if other than lump sum settlement authorized, copy of insurance policy should be attached.)		
17B. AMOUNT OF INSTALLMENTS \$	17C. DATE OF BIRTH AND NAME OF ANY PERSON THE DURATION OF WHOSE LIFE MAY MEASURE THE NUMBER OF PAYMENTS	17D. AMOUNT APPLIED BY THE INSURANCE COMPANY AS A SINGLE PREMIUM REPRESENTING THE PURCHASE OF INSTALLMENT BENEFITS \$
17E. BASIS (Mortality table and rate of interest) USED BY INSURER IN VALUING INSTALLMENT BENEFITS		
18. WAS THE INSURED THE ANNUITANT OR BENEFICIARY OF ANY ANNUITY CONTRACT ISSUED BY THE COMPANY? <input type="checkbox"/> YES <input type="checkbox"/> NO		
19. NAMES OF COMPANIES WITH WHICH DECEDENT CARRIED OTHER POLICIES AND AMOUNT OF SUCH POLICIES IF THIS INFORMATION IS DISCLOSED BY YOUR RECORDS		
The undersigned owner of the above-named insurance company hereby certifies that this statement sets forth correct and true information.		
DATE OF CERTIFICATION 1g 11-6-68p	SIGNATURE 	TITLE Sr. Claim approver

INSTRUCTIONS

PURPOSE OF STATEMENT.—The information shown by this statement is required for the purpose of determining the statutory gross estate of the insured for Federal estate tax purposes.

STATEMENT OF INSURER.—This statement must be made, on behalf of the insurance company which issued the policy, by an officer of the company having access to the records of the company. For purposes of this statement, a facsimile signature may be used in lieu of a manual signature and, if used, shall be binding as a manual signature.

DUTY TO FILE.—It is the duty of the executor to procure this statement from the insurance company and file it with the return. However, if specifically requested, the insurance company should file this statement direct with the official of the Internal Revenue Service making the request.

SEPARATE STATEMENTS.—A separate statement must be filed for each policy listed on the return.

- 45 - SCHEDULE E
JOINTLY OWNED PROPERTY

I. Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? ☒ Yes ☐ No
If "Yes," state the name and address of each surviving cotenant.

NAME	ADDRESS (Number, street, city, State, and Postal ZIP code)
Anna Vatter	79 Gorsline St., Rochester, N.Y. 14613

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1	House and land at 79 Gorsline St., Rochester, NY known as Lot 27 of the North Park or Gorsline Tract as shown on a map of said tract filed in Monroe County Clerk's Office in Liber 8 of Maps page 68. Joint name Anna Vatter. Assessed value \$6700- <u>See appraisal</u>		\$	\$ 19,500.00
2	U. S. E Bonds registered name Joseph or Anna Vatter See schedule attached			2,568.31
3	U.S. H Bonds registered name Joseph Vatter or Anna Vatter			10,000.00
4	Marine Midland Bond #001672 GR - Joseph or Anna Vatter			10,936.20
5	Community Savings Bank Account #76165, Joseph Vatter and Anna Vatter			6,368.51
6	Lincoln Rochester Trust 06-16655-7 Joseph Vatter and Anna Vatter			4,769.66
TOTAL (also enter under the Recapitulation, Schedule C)				\$ 54,142.68

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule E--Page 15

45-10-11720-1

Notary Public, State of New York,
County of Monroe.
My Commission Expires March 30, 1970

SCHEDULE E

JOINTLY OWNED PROPERTY

Item 2. U.S. E bonds registered name Joseph or Anna Vatter:

<u>Issue Date</u>	<u>Amount</u>	<u>Value at date of death</u>
4/42	\$ 100	\$ 169.56
4/42	50	84.78
8/42	100	168.08
11/42	100	168.08
11/42	100	168.08
4/43	25	41.34
4/43	100	165.36
1/44	500	800.60
2/44	25	40.03
6/45	500	762.40
		<u>\$ 2,568.31</u>

In The Matter of the Estate
- of -
Joseph Vatter

State of New York)
County of Monroe) SS.
City of Rochester)

I, William A. Feldman, of the City of Rochester, County of Monroe, State of New York, being duly sworn, depose and say:

I am now and have been a Licensed Real Estate Broker since 1938, and am a member of the Real Estate Board of Rochester. I have made appraisals of all types of real estate and am generally acquainted with the real estate market in Monroe County.

I have personally inspected the property located at 77 & 79 Gorsline Street, in the City of Rochester, County of Monroe, State of New York, being the Estate of Joseph Vatter. The lot is 45' x 133'. The assessed valuation of the lot and all improvements is Sixty-seven hundred dollars (\$6700.00).

The improved property is a two-family house of frame construction with a two-car garage on rear of lot. The exterior is in very good condition as to roof, gutters and siding. The driveway is an asphalt type, also in good condition.

The first and second floor are of the same floor plan of five (5) rooms, consisting of living room, dining room, kitchen, two (2) bedrooms and bathroom. The entire interior is in good condition.

There is an attic over the entire house, fully floored and a full basement with good cement floor. There is one oil-fired heating unit, two 30 gallon water heaters and two laundry trays.

It is assumed that the title to the property is marketable, is appraised as a whole and as though owned in fee simple, unencumbered by liens, mortgages or other indebtedness.

This appraisal represents the independent opinion of the appraiser, free from any commitments and free from any interest in the property, with the sole compensation for the employment being a fair professional fee.

Considering the fine residential location, the assessment of Sixty-seven hundred dollars (\$6700.00) and the good condition of this two family property, I feel its value as of May 1968 was Nineteen thousand five hundred dollars (\$19500.00).

W.A.Feldman
1456 Lake Avenue
Rochester, NY 14615

458-6402

7-10-69

Sworn to before me
this 16th day of July 1969.

Margaret M. Feldman

MARGARET M. FELDMAN
Notary Public, State of New York,
County of Monroe.
My Commission Expires March 30, 1970

William A. Feldman
William A. Feldman

SCHEDULE F
OTHER MISCELLANEOUS PROPERTY

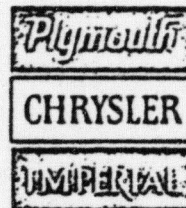
1. Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? ☐ Yes ☒ No
2. Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? ☐ Yes ☒ No
3. Was there any insurance which the decedent owned on the life of another which is not included in the return as a part of the gross estate? If "Yes," full details must be submitted under this schedule. ☐ Yes ☒ No
4. State whether the decedent's estate, his spouse, or any other person, has received, or will receive, any bonus or award as a result of the decedent's employment or his death. If "Yes," full details must be submitted under this schedule. ☐ Yes ☒ No

Item No	Description	Subsequent valuation date	Alternate value	Value at date of death
1	Dividends-Metropolitan Life Insurance #4565 393A		\$	\$ 229.05
2	Dividends-Metropolitan Life Insurance #11 261 125A			326.57
3	Dividends-Metropolitan Life Insurance #13 883 850A			511.29
4	Dividends-Metropolitan Life Insurance #12 882 153A			1,889.94
5	1966 Chrysler Newport Sedan (Doyle)			1,500.00
6	Household Furnishings, not more than			1,000.00
TOTAL (also enter under the Recapitulation, Schedule O)				\$ 5,456.85

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule F—Page 17



GEORGE B. DOYLE, INC.

167 COURT STREET ROCHESTER, NEW YORK 14604 TELEPHONE 454-3790

July 22, 1969

William J. Frank Atty.
Times Square Bldg.
45 Exchange St.
Rochester, New York 14614

Dear Sir:

The average value of a 1966 Chrysler Newport
as of May, 1968 is \$1500.00.

Yours truly,
GEORGE B. DOYLE, INC.

A handwritten signature in cursive script, appearing to read 'Angelo Giosio'.

Angelo Giosio
Manager

AG/pae

2a. Did the decedent, at any time, make a transfer (other than an outright transfer not in trust) of an amount of \$5,000 or more without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the instructions for this schedule? ☐ Yes ☒ No

[illegible]

3e. Motive which actuated decedent in making transfer

5. If a Federal gift tax return(s) was ever filed, state the year(s) covered and the Internal Revenue district in which filed.

(If more space is needed, insert additional sheets of same size)

65-16-17720-2

**SCHEDULE H
POWERS OF APPOINTMENT**

- 1a. Did the decedent, at the time of death, possess a general power of appointment created after October 21, 1942? ☐ Yes ☒ No 1b. On or before such date? ☐ Yes ☒ No
- 2a. Did the decedent, at any time, by will or otherwise, exercise or release (to any extent) a general power of appointment created after October 21, 1942? ☐ Yes ☒ No 2b. On or before such date? ☐ Yes ☒ No
3. Were there in existence at the time of the decedent's death any trusts not created by him under which he possessed any power, beneficial interest, or trusteeship? ☐ Yes ☒ No

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1			\$	\$
TOTAL (also enter under the Recapitulation, Schedule O) (If more space is needed, insert additional sheets of same size)			\$	\$

**SCHEDULE I
ANNUITIES**

- 1a. Was the decedent, immediately before his death, receiving an annuity as described in paragraph 1 of the instructions? ☒ Yes ☐ No
- 1b. If "Yes," was that annuity paid pursuant to an approved plan as described in paragraph 4 of the instructions? ☒ Yes ☐ No
- 1c. If the answer to "1b." is "Yes," state the ratio of the decedent's contribution to the total purchase price of the annuity.
- 2a. If the decedent was employed at the time of his death, did an annuity or other payment as described in paragraph 3(d) of the instructions become payable to any beneficiary by reason of the beneficiary's having survived the decedent? ☐ Yes ☒ No
- 2b. If "Yes," state the ratio of the decedent's contribution to the total purchase price of the annuity.

Item No.	Description	Subsequent valuation date	Alternate value	Value at date of death
1	Metropolitan Life Insurance Co. Contract #410 117 RB Computed value of unpaid guaranteed instalment payable to estate Contract purchased 2/7/63		\$	\$ 21,029.22
TOTAL (also enter under the Recapitulation, Schedule O) (If more space is needed, insert additional sheets of same size)			\$	\$ 21,029.22

ESTATE OF JOSEPH VATTER

Schedules H and I—Page 21

DEDUCTIONS

SCHEDULE J

FUNERAL EXPENSES AND EXPENSES INCURRED IN ADMINISTERING PROPERTY SUBJECT TO CLAIMS

NOTE.—Do not list on this schedule expenses of administering property not subject to claims. In connection with such expenses, see Schedule L.

If executors' commissions, attorneys' fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for Federal income tax purposes.

Item No.	Description	Amount
A. Funeral expenses:		
1.	Farrell Bros. 51 Ridge Rd. West, Rochester, N.Y. 14615	\$ 1,303.00
2.	Hotel and Meals-out of town guests	330.50
	Total.....	\$ 1,633.50
B. Administration expenses:		
1	Executors' commissions—amount estimated/agreed upon/paid. (Strike out words not applicable).....	3,700.00
2	Attorneys' fees—amount estimated/agreed upon/paid. (Strike out words not applicable).....	6,200.00
3	Miscellaneous expenses:	
4	J.G. Schneier, Atty. - Guardian Ad Litem	200.00
5	Real Estate Commissions and Expense of Sale of Real Estate and Expenses necessary to comply with building code for multiple dwellings. See Schedule	6,012.68 5812.68
	Total miscellaneous expenses.....	6,212.68
	TOTAL (also enter under the Recapitulation, Schedule O)	\$ 14,046.18

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule J—Page 23

ESTATE OF JOSEPH VATTER

SCHEDULE J

Item 5 - Real Estate Commissions and Expenses of Sale:

261 Melville Street -			
Real Estate Commissions	\$	750.00	
Closing costs		<u>620.00</u>	
			\$ 1,370.00
367 Pullman Avenue -			
Closing costs	\$	283.61	
Expenses for compliance with multiple residence law		702.07	
Real Estate Commissions		<u>1,230.00</u>	
		2,215.68	2,415.68
783-85 Arnett Boulevard -			
Closing costs	\$	1,039.00	
Real Estate Commissions		<u>1,188.00</u>	
			2,227.00
		5,812.68	\$ 6,012.68

SCHEDULE K
DEBTS OF DECEDENT AND MORTGAGES AND LIENS

Item No.	Debts of Decedent—Creditor and nature of claim, and allowable death taxes	Amount
1	-	\$ -
TOTAL (also enter under the Recapitulation, Schedule O)		\$ -

Item No.	Mortgages and Liens—Description	Amount
1	-	\$ -
TOTAL (also enter under the Recapitulation, Schedule O)		\$ -

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule K—Page 25

SCHEDULE L

NET LOSSES DURING ADMINISTRATION AND EXPENSES INCURRED IN ADMINISTERING PROPERTY NOT SUBJECT TO CLAIMS

Item No.	Net losses during administration	Amount
1		\$
TOTAL (also enter under the Recapitulation, Schedule O)		\$ ---

Item No.	Expenses incurred in administering property not subject to claims (Indicate whether estimated, agreed upon, or paid.)	Amount
1		\$
TOTAL (also enter under the Recapitulation, Schedule O)		\$ ---

(If more space is needed, insert additional sheets of same size)

ESTATE OF JOSEPH VATTER

Schedule L—Page 27

SCHEDULE M

BEQUESTS, ETC., TO SURVIVING SPOUSE (MARITAL DEDUCTION)

If the decedent died testate, the person or persons filing the return should answer the following questions. Only question 4 should be answered in case the decedent died intestate. If the answer to any question is "Yes," full details should be submitted with the return.

1. Has any action been instituted to contest the will or any provision thereof affecting any property interest listed on this schedule or for construction of the will or any such provision? ☐ Yes ☒ No
- 2a. Had the surviving spouse the right to declare an election between (i) the provisions made in his or her favor by the will and (ii) dower, curtesy, or a statutory interest? ☒ Yes ☐ No
- 2b. If answer to question 2a is "Yes," has the surviving spouse renounced the will and elected to take dower, curtesy, or a statutory interest? ☐ Yes ☒ No
- 2c. Elected to take under the will. ☒ Yes ☐ No
- 2d. Does the surviving spouse contemplate renouncing the will and electing to take dower, curtesy, or a statutory interest? ☐ Yes ☒ No
3. According to the information and belief of the person or persons filing the return, is any action described under question 1 designed or contemplated? ☐ Yes ☒ No
4. According to the information and belief of such person or persons, has any person other than the surviving spouse asserted (or is any such assertion contemplated) a right to any property interest listed on this schedule, other than as indicated under questions 1 or 3? ☐ Yes ☐ No

Item No.	Description of property interests passing to surviving spouse	Value
1	Mortgages, Notes and Cash - Schedule C	\$ 10,906.66
2	Insurance - Schedule D	33,345.00
3	Joint Property - Schedule E	54,142.68
4	Other Property - Schedule F	5,456.85
5	Difference between marital deduction allowed in Federal Estate Tax Return and items passing to spouse outside of Will or otherwise -	
	Marital deduction \$ 108,521.12	
	Property passing outside Will 103,851.19	4,669.93
TOTAL		\$ 108,521.12
Less: (a) Federal estate tax payable out of above-listed property interests.....		\$ None
(b) Other death taxes payable out of above-listed property interests.....		None
Total of items (a) and (b)		None
Net value of above-listed property interests (also enter under the Recapitulation, Schedule O)		\$ 108,521.12

(If more space is needed, insert additional sheets of same size)

ESTATE OF

JOSEPH VATTER

Schedule M—Page 29

**SCHEDULE O
RECAPITULATION**

Schedule	Gross estate	Alternate value	Value at date of death
A	Real estate.....	\$	\$ 94,300.00
B	Stocks and bonds.....		11,908.00
C	Mortgages, notes, and cash.....		10,906.66
D	Insurance.....		33,345.00
E	Jointly owned property.....		54,142.68
F	Other miscellaneous property.....		5,456.85
G	Transfers during decedent's life.....		
H	Powers of appointment.....		21,029.22
I	Annuities.....		
TOTAL GROSS ESTATE.....		\$	\$ 231,088.41

Schedule	Deductions	Amount
J	1. Funeral expenses and expenses incurred in administering property subject to claims..	\$ 14,046.18
K	2. Debts of decedent.....	-
K	3. Mortgages and liens.....	-
	4. Total of items 1 through 3.....	\$ 14,046.18
	5. Allowable amount of deductions from item 4 (see note).....	\$ 14,046.18
L	6. Net losses during administration.....	-
L	7. Expenses incurred in administering property not subject to claims.....	
	8. Total of items 5 through 7.....	\$ 14,046.18
M	9. Bequests, etc., to surviving spouse.....	\$ 108,521.12
	10. Adjusted gross estate (see note).....	217,042.23
	11. Net amount deductible for bequests, etc., to surviving spouse (item 9 or one-half of item 10, whichever is smaller).....	108,521.12
N	12. Charitable, public, and similar gifts and bequests.....	-
TOTAL ALLOWABLE DEDUCTIONS, except exemption (totals of lines 8, 11, and 12).....		\$ 122,567.30

Note.—See paragraph 1 of the instructions.

Note.—Enter at item 10 the excess of "TOTAL GROSS ESTATE" over item 8, if the decedent and his surviving spouse at no time held property as community property. If property was ever held as community property, compute the "Adjusted gross estate" (item 10) in accordance with the instructions and example on page 32, and attach an additional sheet showing such computation.

ESTATE OF JOSEPH VATTER

Schedule O—Page 33

SCHEDULE P

TAXABLE ESTATE—RESIDENT OR CITIZEN

Instructions.—This Schedule Should be Used only for the Estate of a Resident or Citizen of the United States

1. Total gross estate.....		\$ 231,038.41
2. Total allowable deductions.....	\$ 122,567.30	
3. Exemption.....	70,000.00	
4. Total deductions plus exemption.....		182,567.30
5. Taxable estate (Item 1 minus item 4).....		\$ 48,521.11

SCHEDULE Q

TAXABLE ESTATE—NONRESIDENT NOT A CITIZEN OF THE UNITED STATES

Instructions.—This schedule should be used only for the estate of a nonresident not a citizen of the United States. See instructions under "Deduction of administration expenses, claims, etc." on page 39. See also instructions under "Exemption" on page 39 for amount of exemption and names of countries, the estates of whose residents qualify for the "prorated exemption." If decedent was domiciled in Canada and died after December 31, 1953, see "Convention with Canada" on page 39 regarding special exemption and tax computation. Use Form 706g (Schedule Q (2)) instead of Schedule Q in case of decedent who at the time of his death was domiciled in France or Greece and was not a citizen of the United States. (If the "prorated exemption" is claimed under the Japanese convention, the numerator of the fraction set forth in item 7 is the value of the property situated in the United States and subjected to tax by both Japan and the United States.) The value to be entered for item 2 includes real property situated outside of the United States if required to be included in the gross estate by General Instruction I, page 4.

1. Value of gross estate in the United States (Schedules A, B, C, D, E, F, G, H, and I).....	\$	
2. Value of gross estate outside the United States (must be supported by proof described in instructions under "Deduction of administration expenses, claims, etc." on page 39).....	\$	
3. Value of total gross estate wherever situated (Item 1 plus item 2).....	\$	
4. Gross deductions under Schedules J, K, and L.....	\$	
5. Net deductions under Schedules J, K, and L (that proportion of item 4 that item 1 bears to item 3).....	\$	
6. Charitable, public, and similar gifts and bequests (Schedule N).....	\$	
7. Exemption of \$2,000 (in estates qualifying for "prorated exemption," use \$2,000 or $\frac{\text{item 1}}{\text{item 3}} \times \$80,000$, whichever is the greater).....	\$	
8. Total deductions plus exemption (item 5 plus items 6 and 7).....	\$	
9. Taxable estate (item 1 minus item 8).....	\$	

SCHEDULE R

CREDIT FOR TAX ON PRIOR TRANSFERS

Name of transferor.....	Date of transferor's death.....
Transferor's residence at time of death.....	

COMPUTATION OF THE CREDIT

PART I—TRANSFEROR'S TAX ON PRIOR TRANSFERS	
1. Net value of transfers.....	\$
2. Value of transferor's estate (adjusted in accordance with instructions for item 2).....	\$
3. Tax on transferor's estate (adjusted in accordance with instructions for item 3).....	\$
4. Transferor's tax on prior transfers (proportion of item 3 which item 1 bears to item 2).....	\$
PART II—TRANSFEEE'S TAX ON PRIOR TRANSFERS	
5. Transferee's tax computed without regard to credit allowed under this schedule.....	\$
6. Transferee's reduced gross estate.....	\$
7. Transferee's deductions (adjusted in accordance with instructions for item 7).....	\$
8. Transferee's reduced taxable estate (item 6 minus item 7).....	\$
9. Tax on reduced taxable estate.....	\$
10. Transferee's tax on prior transfers (item 5 minus item 9).....	\$
PART III—CREDIT ALLOWABLE	
11. Maximum amount before application of percentage requirement (item 4 or item 10, whichever is smaller).....	\$
12. Percent allowable is.....	
13. Credit allowable (item 12 \times item 11).....	\$

ESTATE OF JOSEPH VATTER

Schedule P, Q, and R—Page 35

704
(Rev. Mar. 1967)
U.S. Treasury Department
Internal Revenue Service

ESTATE TAX—PRELIMINARY NOTICE
ESTATE OF CITIZEN OR RESIDENT OF THE UNITED STATES
(To be filed by executor or person in possession of property—see instructions on reverse)

Decedent's first name and middle initial JOSEPH		Decedent's last name VATTER	Social security number 092-30-8496
Date of death May 5, 1968	Place of death Rochester, N.Y.	Citizenship (nationality) U.S.A.	
Residence (domicile) at time of death 79 Gorsline St., Rochester, N.Y. 14613			
Name of executor, administrator, or person in possession of decedent's property Anna Vatter, Exec.			
Address of executor, administrator, or person in possession of decedent's property 79 Gorsline St., Rochester, N.Y. 14613			
Name of attorney for estate William J. Frank			
Address of attorney for estate 45 Exchange St., Rochester, N.Y. 14614			

RECEIVED
AUG 5 1968
#3
16
U.S. Dir. Int. Rev.
Suitcase, N.Y.

APPROXIMATE VALUES OF VARIOUS CLASSES OF PROPERTY IN DECEDENT'S GROSS ESTATE

Real estate	\$ 60,000-
Stocks and bonds	10,936-
Mortgages, notes, and cash	17,274-
Insurance on decedent's life	61,300-
Annuities	
Jointly owned property	
Transfers during decedent's life	
Powers of appointment	
All other property	
TOTAL	\$ 149,510.00

This notice has been examined by me and to the best of my knowledge it is correct.
Notice was not filed within 60 days period for the reason that the executrix is the surviving widow and after the decease of her husband there were many matters to be taken care of and the filing of this notice was overlooked.

August 1, 1968
(Date)

x

Anna Vatter
(Signature)

Executrix
(Title)

NOTICE.—Failure to file a required return on Form 706 within 15 months from the date of death may render executors, administrators, and persons in actual or constructive possession of the decedent's property liable for penalties.

DECLARATION

Under penalty of perjury, I declare that this return, including any accompanying statements, has been examined by me, and is, to the best of my knowledge and belief, a true, correct, and complete return, made in good faith pursuant to the Internal Revenue Code and the regulations thereunder.

July 24/69 x Anna Vatter
(Date) (Signature of executor, administrator, etc.)

79 Gorsline St.

(Address)
Rochester, N.Y. 14613

DECLARATION OF ATTORNEY OR AGENT PREPARING RETURN

Under penalties of perjury, I declare that I prepared this return for the person or persons whose signature(s) appear(s) above and that this return, including any accompanying schedules and statements, is, to the best of my knowledge and belief, a true, correct and complete return based on all the information relating to the matters required to be reported in this return of which I have any knowledge.

July 24/69 William J. Frank
(Date) (Signature of preparer (individual or firm) other than executor, administrator, etc.)

45 Exchange St., Rochester, N.Y.

(Address) 14614

TABLE A

COMPUTATION OF GROSS ESTATE TAX			
Taxable estate equal to or more than—	Taxable estate less than—	Tax on amount in column (1)	Rate of tax on excess over amount in column (1)
(1)	(2)	(3)	(4)
0	\$5,000	0	(Percent) 3
\$5,000	10,000	\$150	7
10,000	20,000	500	11
20,000	30,000	1,000	14
30,000	40,000	3,000	18
40,000	50,000	4,500	22
50,000	60,000	7,000	25
60,000	100,000	9,500	28
100,000	250,000	20,700	30
250,000	500,000	65,700	32
500,000	750,000	145,700	35
750,000	1,000,000	233,200	37
1,000,000	1,250,000	325,700	39
1,250,000	1,500,000	423,200	42
1,500,000	2,000,000	523,200	45
2,000,000	2,500,000	753,200	49
2,500,000	3,000,000	999,200	53
3,000,000	3,500,000	1,283,200	56
3,500,000	4,000,000	1,543,200	59
4,000,000	5,000,000	1,833,200	63
5,000,000	6,000,000	2,468,200	67
6,000,000	7,000,000	3,133,200	70
7,000,000	8,000,000	3,833,200	73
8,000,000	10,000,000	4,568,200	76
10,000,000		6,083,200	77

TABLE B

COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES			
Taxable estate equal to or more than—	Taxable estate less than—	Credit on amount in column (1)	Rate of credit on excess over amount in column (1)
(1)	(2)	(3)	(4)
0	\$40,000	0	(Percent) None
\$40,000	90,000	0	0.8
90,000	140,000	\$400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,800	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	108,800	8.0
2,540,000	3,040,000	148,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	235,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	798,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000		1,082,800	16.0

ESTATE OF JOSEPH VATTER

COPY

LAST WILL AND TESTAMENT.

I, JOSEPH VATTER of the City of Rochester in the County of Monroe and State of New York, being of sound mind and memory do make, publish and declare this my last WILL AND TESTAMENT in the manner following, that is to say:

FIRST. I direct that all my just debts and funeral expenses be paid as soon after my decease as may be practicable, except that the payment of any debt secured by a mortgage or pledge of real or personal property may be postponed by the Executors in their discretion.

SECOND. If my wife, Anna Vatter, survives me, I give and bequeath to her all of my household goods, furniture, furnishings, works of art, personal effects, jewelry, and cars.

THIRD. If my wife, Anna, survives me, I give and bequeath to her absolutely and forever, an amount equal to the maximum estate tax marital deduction allowable in determining the Federal estate tax on my estate for Federal estate tax purposes, less the value for Federal estate tax purposes of all other items which pass or have passed to my wife under other provisions of this Will or otherwise, but only to such extent that such items are included in my gross estate and are allowable as a marital deduction for Federal estate tax purposes. In making the computations necessary to determine the amount of this gift and bequest the final determinations for Federal estate tax purposes shall control. In the sole power and discretion of the Executors, the payment of this amount may be made wholly or partly in cash or property as selected by them; provided however, that all such property so selected shall be valued at the value thereof as finally determined for Federal estate tax purposes of my estate; provided further, that in exercising this power and discretion the Executors shall first allot to this gift and bequest the more liquid and salable assets of my estate; and provided further, that in no event shall there be included in this gift and bequest any asset or the proceeds of any asset which will not qualify for the marital deduction for Federal estate tax purposes. The exercise of the foregoing power and discretion by the Executors shall not be subject to question by any beneficiary, even though the result may be distribute to my wife property which at the time of such distribution is worth more or less than the amount of this gift and bequest or the part thereof which is satisfied by such distribution.

FOURTH. All the rest, residue and remainder of my property I give, devise and bequeath to my Trustee hereinafter named, in trust nevertheless for the following uses:

My Trustee shall hold, invest and reinvest same in accordance with the terms hereof, shall collect and receive the income therefrom and after paying all expenses incident to the management of said Trust, shall pay all of the net income from the said trust to my wife, Anna Vatter, quarter-annually, in as nearly equal installments as practicable, so long as she shall live. In addition, my Trustee shall distribute to or for the benefit of my wife from time to time so much of the trust as my Trustee in its sole discretion shall consider it necessary or advisable for her health, support and general welfare, such discretion to be exercised in a liberal fashion.

The Trustee shall invest and reinvest any funds in my estate or in any trust created herein in such investments as they, in their discretion, may deem advisable, it being my intention to relieve my Executors and Trustees from all restrictions placed by law upon investments by fiduciaries, and to confer upon them such full and discretionary power of

[Joint Exhibit 2-B]

[-2-]

investment and reinvestment as they would possess if they were the absolute owners of the property held by them under this Will.

Upon the death of my wife, Anna Vatter, the principal then remaining in the trust shall be divided into four equal parts and one of such part shall be paid over to each of my children, namely:
Richard Vatter, Anna Marie Gaas, Joseph E. Vatter, Jr. and one of such part shall be paid over to the surviving children of my deceased daughter, Eleanor Horgan. If at the decease of my wife, Anna Vatter, my Trustee retained in this trust any real property or any property of any specific nature other than cash, the Trustee is to be allowed to turn over to such child according to their desires, any property which it holds title to and the then appraised value of such property shall be given to such child to apply against his or her share of the balance of the remainder of the trust.

FIFTH. In the event my said wife, Anna Vatter, predeceases me, I give, devise and bequeath my property as follows:

(a) I give, devise and bequeath the sum of \$1,000.00 to each of my grandchildren living at the time of my death.

(b) I give, devise and bequeath to my sister, Christina Kneuer, Sall On the Salls, Germany, the sum of \$500.00.

(c) I give, devise and bequeath to my brother, Alois Vatter, 1122 Finley Avenue, Bronx 56, New York, the sum of \$500.00.

(d) I give, devise and bequeath to my sister, Clothilda Vatter, 454 Onderdunk Avenue, Brooklyn, New York, the sum of \$500.00.

(e) I give, devise and bequeath to my nephew, William Vatter, 432 Hollybrook Road, Hanrietta, New York, the sum of \$250.00.

(f) I give, devise and bequeath to my nephew, Frank J. Vatter, 1819 Greene Avenue, Brooklyn 37, New York the sum of \$250.00.

(g) I give, devise and bequeath to my niece, Clothilda Reichart, Orlenbacher Weg. 147, Ebenhausen UFR, Germany, the sum of \$1,000.00.

(h) I give, devise and bequeath to my wife's nephew, Joseph Schreffrinhaus, 52 Butler Place, Rosebank, Staten Island, New York, the sum of \$500.00.

(i) All the rest, residue and remainder of my property I give, devise and bequeath to my children or their survivors as follows:

One-quarter of the rest, residue and remainder to the surviving children of my deceased daughter, Eleanor Horgan;

One-quarter to my son, Richard Vatter if living, and if deceased to his surviving children;

One-quarter to my daughter, Anna Marie Gaas if living, and if deceased to her surviving children;

One-quarter to my son, Joseph E. Vatter, Jr. if living, and if deceased to his surviving children.

The share herein bequeathed and devised to each such child shall pass to the issue of such child if his or her death occurs prior to the death of the survivor of myself and my said wife, and if such child shall leave no issue him or her surviving, I give and bequeath from the share of such child, the sum of \$2,000.00 to the spouse of such deceased child, if living; and I give, devise and bequeath the balance of the share of such deceased child to the brothers and sisters of such child in equal shares, or their issue, if any other child be then deceased, per stirpes.

SEVENTH. All estate, inheritance, transfer, legacy or succession taxes, or death duties, which may be assessed or imposed with respect to my estate or any part thereof, wheresoever situated, whether or not passing under my Will, including the taxable value of all policies of insurance on my life and of all transfers, powers, rights, or interests includible in my estate for the purposes of such taxes and duties, shall be paid out of my residuary estate as an expense

[-3-]

of administration and without apportionment, and shall not be prorated or charged against any of the other gifts in this Will or against property not passing under this Will.

EIGHTH. I give to my Executor and Trustee the following powers, in addition to and not in limitation of his common law and statutory powers:

To sell, at public or private sale, for cash or on credit, and upon such terms as they may deem proper, any property at any time held by them. No purchaser of such property shall be bound to see to or be liable for the application of the proceeds of any such sale.

To manage any real property held by them in such manner as they may determine, including authority to repair or improve such property, to mortgage such property in such amount, on such conditions, and such rates of interest as they deem advisable, to make, renew, or modify leases on such property for such rentals and on such terms as they may determine, irrespective of whether the term of any such lease extends beyond the period otherwise permitted by law or the probable duration of any trust created herein; to abandon such property, to adjust boundaries, to erect or demolish buildings thereon, to convert for a different use, to dedicate for public use without compensation, to grant easements, to waive payment for property taken by right of eminent domain, to insure for any or all risks, to grant options, to partition, to enter party-wall contracts, to protect out of the general funds of the estate or any trust created herein, to insure or perfect title, and to charge the cost of any action taken with regard to any such property to principal or income as they may determine.

To lease any real property that may be included in my estate or any trust created herein upon such terms and conditions and for such periods, including renewal options, as they may determine, even though the period of any such lease may extend beyond the period authorized by law or beyond the duration of any trust created herein, and to renew, cancel, amend, modify, extend, or consent to the assignment or sublease of any such lease, upon such terms as they may deem advisable.

LASTLY. I hereby nominate and appoint my wife, ANNA VATTER Executrix of this my last WILL AND TESTAMENT, if living and if deceased or unable to act, I hereby nominate and appoint the GENESEE VALLEY UNION TRUST COMPANY as Trustee and Executor of this, my last WILL AND TESTAMENT, with full power and authority to sell and convey, lease or mortgage real estate; hereby revoking all former Wills by me made, and I direct and request that WILLIAM J, FRANK be retained as attorney for my estate.

IN WITNESS WHEREOF, I have hereunto subscribed my name the 29th day of May, in the year Nineteen Hundred and Sixty-one.

JOSEPH VATTER

L.S.

[-4-]

We, whose names are hereto subscribed, DO CERTIFY that on the 29th day of May, 1961 JOSEPH VATTER, the testator above named, subscribed his name to this instrument in our presence and in the presence of each of us, and at the same time, in our presence and hearing, declared the same to be his last WILL AND TESTAMENT, and requested us, and each of us, to sign our names thereto as witnesses to the execution thereof, which we hereby do in the presence of the testator and of each other, on the day of the date of the said Will, and write opposite our names our respective places of residence.

William J. Frank residing at 321 Seneca Plwy
Rochester 13, N.Y.

Russell A. Sibley residing at 1960 Clover St.
Rochester, N.Y.

It is hereby CERTIFIED that the
copy has been compared by
me with the original and found to be
a true and complete copy.

William J. Frank
ATTORNEY

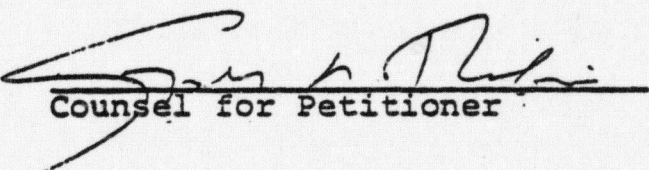
UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED,)	
ANNA VATTER, EXECUTRIX,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7228-72
)	
COMMISSIONER OF INTERNAL REVENUE,)	[Filed May 23, 1975]
)	
Respondent.)	

SUPPLEMENTAL STIPULATION OF FACTS

Pursuant to the agreement of the parties in this case, the following paragraph is hereby incorporated into and made a part of paragraph 1 of the original stipulation of facts filed by the parties to this case:

1. At the time of filing of her petition herein, the address of Anna Vatter, Executrix of the Estate of Joseph Vatter, was 79 Gorsline Street, Rochester, New York 14613.


Counsel for Petitioner

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By: (Sgd) Stephen M. Miller
Stephen M. Miller
Assistant Regional Counsel
304 U.S. Courthouse
Buffalo, New York 14202
Tel. No. (716) 842-5774

Date: MAY 19 1975

65 T. C. No. 57

UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED, ANNA VATTER, EXECUTRIX,
Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 7228-72.

Filed December 31, 1975

Decedent devised and bequeathed his residuary estate to a testamentary trust. The bulk of the residuary estate consisted of two rental properties which his executrix sold in order to distribute cash to the trust. The selling expenses are allowable administration expenses under the laws of New York where the estate is being administered.

Held: The selling expenses are deductible from the value of the gross estate under sec. 2053(a). Estate of Louis Sternberger, 18 T.C. 836 (1952) followed. The decedent did not specifically devise the rental properties nor did his will contemplate a distribution of the properties in kind. Estate of Christine Swayne, 43 T.C. 190 (1964), and Estate of David Smith, 57 T.C. 650 (1972) distinguished.

[- 2 -]

Sydney R. Rubin, for the petitioner.

Bernard R. Baker, III, for the respondent.

FORRESTER, Judge: Respondent has determined a deficiency in estate tax in the amount of \$517.40. Petitioner claims an overpayment based on reasonable attorneys' fees incurred in order to contest the deficiency in the instant case. The sole issue for our decision is whether certain selling expenses are deductible from the value of decedent's gross estate as administration expenses pursuant to section 2053(a).¹

FINDINGS OF FACT

All of the facts have been stipulated and are so found.

Joseph Vatter (decedent) died testate on May 5, 1968, a resident of Rochester, New York. The estate tax return was timely filed with the District Director of Internal Revenue, Buffalo, New York.

1

All statutory references are to the Internal Revenue Code of 1954, unless otherwise indicated.

[- 3 -]

Decedent's last will and testament nominated and appointed his wife, Anna Vatter, to be executrix of his estate. The will was duly admitted to probate in the Surrogate's Court for Monroe County, New York and Anna Vatter ("executrix" or "petitioner") duly qualified as executrix. The Genesee Valley Union Trust Company was nominated by decedent's will, and it qualified as trustee of a testamentary trust to which decedent bequeathed and devised the "rest, residue and remainder" of his estate.

Decedent had acquired three parcels of improved real estate located in Rochester, New York at bank foreclosure sales during the years 1935 to 1940. During the year 1969, all of the three properties were rental properties: 261 Melville Street being a single-family dwelling; 367 Pullman Avenue being a four-family dwelling; and 783-785 Arnett Boulevard being a two-family dwelling. Because of the age of the properties, it was necessary, from time to time, to expend sums for maintenance and repairs.

Pursuant to the power to sell granted her by decedent's will, the executrix took possession and control of the three improved parcels of real estate owned by decedent at the time of his death and sold each of them, incurring the following selling expenses:

261 Melville Street		
Closing costs	\$	620.00
Real estate commissions		750.00
Total:		\$1,370.00
367 Pullman Avenue		
Closing costs		283.61
Expenses for compliance with multiple residence laws		702.07
Real estate commissions		1,230.00
Total:		\$2,415.68
783-85 Arnett Boulevard		
Closing costs		1,039.00
Real estate commissions		1,188.00
Total:		<u>\$2,227.00</u>
Total selling expenses (all three parcels)		<u><u>\$6,012.68</u></u>

Conveyance of all three properties was made by executor's deed. The dates of sale, and the gross and net proceeds from each sale were as follows:

<u>Property</u>	<u>Date</u>	<u>Gross</u>	<u>Net</u>
Melville St.	April 1, 1969	\$12,500.00	\$11,130.00
Pullman Ave.	March 28, 1969	20,500.00	18,084.32
Arnett Blvd.	June 10, 1969	19,800.00	17,573.00

The cash needs of decedent's estate were as follows
for the purposes set forth below:

[- 5 -]

Funeral expenses	\$1,633.50	
Attorney's fees	6,200.00	
Guardian's fees	200.00	
Federal taxes	7,123.87	
State taxes	<u>2,500.00</u>	
		<u>\$17,657.37</u>
Specific bequest to wife:		
Adjusted marital deduction	\$110,842.46	
Less value of property passing to spouse outside of will or otherwise	<u>(103,851.19)</u>	
		<u>\$ 6,991.27</u>
Total cash needs of estate for purposes set forth above		<u><u>\$24,648.64</u></u>

To meet such \$24,648.64 cash needs, \$21,029.22 was available from the proceeds of an annuity. The decedent's estate received the \$21,029.22 on or about July 11, 1968; such sum represented the commuted value of the unpaid, guaranteed annuity installments due decedent under a contract with an insurance company.

On the estate tax return, the executrix deducted from the value of the gross estate as expenses incurred in administering property of the estate, the real estate commissions, closing costs and expenses incurred in complying with local multiple residence laws arising out of the sale

[- 6 -]

of the above three parcels of improved real estate.²

Respondent allowed the selling expenses of the Melville Street property as a deduction for administration expenses because of the difference between the \$21,029.22 cash annuity receipt and the cash needs of \$24,648.64.

The remaining proceeds from the sale of the Melville property together with the net proceeds from the sales of the other two rental properties comprised the "rest, residue and remainder" of decedent's estate and, therefore, the corpus of the testamentary trust.

The trustee did not desire to have the rental properties turned over to it to manage as the corpus of the testamentary trust. Therefore, the executrix sold the properties on the open market.

Decedent's will granted to both his executrix and the trustee, among other powers, the power "to sell, at public or private sale, for cash or on credit, and upon such terms as they may deem proper, any property at any time held by them."

2

Due to a mathematical error in the return, the deduction was overstated by \$200. The correct amount of the deduction in controversy is \$4,442.68.

[- 7 -]

The expenses of selling the three properties are reasonable in amount. No accounting, either interim or final, has yet been filed with the Surrogate's Court. When such accounting is filed, the executrix intends to claim the expenses of selling the three properties as expenses of administration under New York Surrogate's Court Procedure Act, article 22 (McKinney 1967), and New York Estates, Powers and Trusts Law, sections 11-1.1(b) (5) and 13-1.3(a) (1) (McKinney 1967).

It is stipulated that the attorney's fees paid by petitioner in order to contest the deficiency herein are reasonable and are allowable administration expenses. They will be taken into account in the Rule 155 computation herein.

OPINION

The sole issue before us is whether the expenses of selling two improved parcels of real estate³ that constitute

³ Respondent concedes the deductibility under section 2053(a) of the expenses of selling the Melville property because cash generated by that sale was necessary to pay existing administration expenses, taxes, and decedent's specific bequest to his wife.

[- 8 -]

the major part of the corpus of the testamentary trust are deductible as administration expenses under section 2053(a).⁴

Respondent's position is that these selling expenses are not deductible administration expenses because they were not necessary within the meaning of section 20.2053-3, Estate Tax Regs., to pay decedent's debts, expenses of administration or taxes, or to preserve the estate or to effect distribution. He also argues that the expenses were incurred for the benefit of the testamentary trustee and not for the estate.

⁴
SEC. 2053. EXPENSES, INDEBTEDNESS, AND TAXES.

(a) General Rule.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts--

* * *

(2) for administration expenses,

* * *

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

Petitioner argues that the sales were necessary to effect the distribution of the residuary estate to the testamentary trust. Further, petitioner contends that section 2053(a) provides that administration expenses allowable as such under the laws of the jurisdiction in which the estate is being administered are deductible from the value of the gross estate. Thus she contends, in the instant case, that if the expenses of selling the two parcels of real estate are allowable administration expenses under New York law, a plain reading of section 2053(a) compels us to find the expenses to be deductible.

We think it clear, and respondent does not argue otherwise, that these selling expenses are allowable administration expenses under New York law. Secs. 11-1.1(b)(5) and (23) and 13-1.3(a), N.Y. Est., Powers & Trusts (McKinney 1967); In re Estate of Saphir, 73 Misc. 2d 907, 343 N.Y.S. 2d 20 (1973); In re Estate of Way, 56 Misc. 2d 552, 289 N.Y.S. 2d 272 (1967); see, N.Y. Temporary Commission on Estates, "Statutory Powers of Fiduciaries," Rep. No. 6.4C, Legislative Doc. (1964) No. 19. We also think that the selling expenses in issue are deductible under respondent's regulations, and, therefore, we find for the petitioner.

[- 10 -]

Respondent relies primarily on our holding in Estate of David Smith, 57 T.C. 650 (1972), affd. 510 F. 2d 479 (2d Cir. 1975), cert. denied, ___ U.S. ___ (1975). We think Smith is distinguishable, and we follow Estate of Louis Sternberger, 18 T.C. 836 (1952), affd. 207 F. 2d 600 (2d Cir. 1953), revd. on other grounds, 348 U.S. 187 (1955).

In the instant case, as in Sternberger, the proceeds from the sale of the real property became part of the residuary estate bequeathed to the testamentary trust. In Sternberger, we said (18 T.C. at 842):

The proceeds of the sale were not needed to pay debts or expenses and consequently became part of the trust created by the residuary clause of the will. Although both the trustee and executor had the power to sell the property, the controlling fact is that the executor actually sold the real estate in the will and the proceeds subsequently became part of the residue under the will. * * *

Here, as in Sternberger, both the executrix of the estate and the trustee of the testamentary trust were given the power to sell the real property. Likewise here, the controlling fact is that the executrix actually sold the real estate, the proceeds becoming part of the residue under the will.

In Estate of David Smith, supra, the majority of this Court did not distinguish Sternberger, but relied instead on Estate of Christine Swayne, 43 T.C. 190, 201-202 (1964).

[- 11 -]

Swayne distinguished Sternberger solely on the grounds that the issue involved in Sternberger was whether the expenses of selling the real property (which were deducted as administration expenses) were expenses of the estate or of the trust saying, l.c. 202, "The question whether the sale was necessary was not involved." The issue in the instant case is identical to the issue in Sternberger.

In Swayne the real property sold (the decedent's residence) was specifically devised, and the proceeds from its sale were not part of the residuary estate. 43 T.C. at 193, 201. In Smith, the will contemplated a distribution to testamentary trusts of the property (sculptures) in kind, and the sales of the sculptures were consummated on behalf of the trusts. 57 T.C. at 661. In the instant case, the real property was neither specifically devised nor intended to be distributed in kind. The executrix acted on behalf of the estate fully within the authority given her by the will and by New York law in selling the real property.

We cannot agree with respondent that Smith impliedly overruled Sternberger. It is clear that in Smith we made a factual determination that the selling expenses were not allowable administration expenses under New York law.

[- 12 -]

57 T.C. at 661; 510 F. 2d at 482, 483. In the instant case, the selling expenses are allowable administration expenses under New York law. Secs. 11-1.1(b)(5) and (23), and 13-1.3(a), N.Y. Est. Powers & Trusts (McKinney 1967).

We do not need to resolve the question of the validity of respondent's regulations that is raised by petitioner's contention that a plain reading of section 2053(a) impels the deductibility of the selling expenses. In the instant case, as in Estate of David Smith, supra, there is no conflict between the application of New York law and respondent's regulations, and anything that we would say herein regarding the validity of respondent's regulations would be obiter dictum.⁵ Estate of Smith, 510 F. 2d at 483.

⁵ The expenses of selling the real property would be allowable administration expenses under New York law even if not necessary within the meaning of sec. 20.2053-3, Estate Tax Regs. In this respect, New York law has changed since our decision in Estate of David Smith, 57 T.C. 650 (1972). Sections 11-1.1(b)(5) and (23), and 13-1.3(a), N.Y. Est., Powers & Trusts (McKinney 1967), and Practice Commentaries thereto; In re Estate of Saphir, 73 Misc. 2d 907, 343 N.Y.S. 2d 20 (1973). There is clear conflict in the courts over the deductibility from the value of the gross estate of expenses allowable as administration expenses by state law. The two principal opinions are as follows: (1) The literal language of sec. 2053(a) leaves to state law the determination of whether an expense is an allowable administration expense, and if the federal court determines that the expense is so allowable, it is continued

In the instant case, the corpus of the testamentary trust was to be the residue of decedent's estate which would be distributed as either real or personal property. In 1967, New York abolished the distinctions between real and personal property for purposes of estate administration. See, Practice Commentaries to sections 11-1.1 and 13-1.3, N. Y. Est., Powers & Trusts (McKinney 1967). Thus, under New York law the substance of the residuary estate was unaffected by the sales of the rental real estate.

The trustee did not wish to accept as trust property the rental real estate which comprised a substantial portion of the decedent's residuary estate.⁶ Thus, in order for

Footnote 5 -- continued

deductible from the value of the gross estate. Estate of Park v. Commissioner, 475 F. 2d 673 (6th Cir. 1973); Ballance v. United States, 347 F. 2d 419 (7th Cir. 1965); (2) Federal law (presumably respondent's regulations) governs the definition of "administration expense" and if the expense is an administration expense as defined by federal law, then the court looks to state law to see if it is allowable; if both tests are met, then the expense is deductible. Pitner v. United States, 388 F. 2d 651 (5th Cir. 1967).

The Second Circuit, to which an appeal lies in this case, has not expressed a position in the conflict. Estate of Smith v. Commissioner, 510 F. 2d 479, 483 (2d Cir. 1975).

Although the question cries out for a definitive ruling, this case is not the proper vehicle for such a ruling because, as we find, supra, there is no conflict here between the application of state law and respondent's regulations.

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Both parties agree on brief that the properties were old and required maintenance and repairs which the trustee was neither equipped nor willing to provide.

[- 14 -]

the residuary estate to be distributed to the trustee named in decedent's will, it was necessary for the executrix to sell the rental real estate. Therefore, the selling expenses were necessarily incurred to effect the distribution of the residuary estate to the testamentary trust within the meaning of section 20.2053-3(d)(2), Estate Tax Regs.

The expenses of selling the rental properties are administration expenses allowable under New York law, and consequently, are deductible from the value of the gross estate under section 2053(a). In order to take into account the reasonable attorney's fees incurred by the estate in contesting the deficiency herein,

Decision will be entered
under Rule 155.

UNITED STATES TAX COURT

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

)
)
)
)
) Docket No. 7228-72
)
)
)

DECISION

Pursuant to the opinion of the Court filed December 31, 1975, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is an overpayment in estate tax in the amount of \$31.50, which amount was paid on July 28, 1969, and for which amount a claim for refund could have been filed, under the provisions of Section 6511(b)(2) of the Internal Revenue Code of 1954, on June 16, 1972, the date of mailing of the notice of deficiency.

(Signed) BRUCE M. FORRESTER
Judge.

Entered: FEB 17 1976

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Docket No. 7228-72

[-2-]

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision.

/s/ Sydney R. Rubin

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Date:

FEB 2 1976

UNITED STATES
TAX COURT
FILED

UNITED STATES TAX COURT

1976 MAY 15 PM 4 18

ESTATE OF JOSEPH VATTER, DECEASED,
ANNA VATTER, EXECUTRIX,

Petitioner-Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellant.

Docket No. 7228-72

NOTICE OF APPEAL

Notice is hereby given that the Commissioner of Internal Revenue appeals to the United States Court of Appeals for the Second Circuit from the decision of this Court entered in the above-captioned proceeding on the seventeenth day of February, 1976.

Scott P. Crampton
COJ

SCOTT P. CRAMPTON
Assistant Attorney General
Department of Justice

(signed) Meade Whitaker
COJ

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

BEST COPY AVAILABLE

CERTIFICATE OF SERVICE

It is hereby certified that service of this record appendix has been made on opposing counsel by mailing four copies thereof on this 22d day of July, 1976, in an envelope, with postage prepaid, properly addressed to him as follows:

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